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Collections of Hindu Law Texts

(No. 2).

PART II.

Yâjñavalkyasmṛiti

OR

Institutes of Yâjñyavalkya

Together with the Commentary called

THE MÎTÂKSHARÂ

BY

S'ri Vijñânes'vara

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ai

BOOK THE SECOND - व्यवहाराध्याय.

nglish Translation with notes, explanations, etc.

BY

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FIRST EDITION

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FOREWARD.

This translation of the *Vyawahára-Adhyáya* the Second Book of the *Yájñyavalkya-Smrìtî* with the Mîtâkasharâ is now being presented to the public in a book form. When it was commenced in the year 1910, it was never thought that the publication would drag over such a long period of nearly ten years. Although the translation was completed early, its publication has been delayed so long. Indeed the author feels grateful that it did not take longer.

The English translation contained in this volume is based on the text as settled by the Editor and published in this series of "the Collections of Hindu Law Texts" as Volume I. The pages indicated in the margin refer to the numbers of pages in the Sanskrit Text. The original Sanskrit text was settled by collating six different manuscripts and other published editions as detailed in the short preface to Volume I.

The Yâjñyavalkya Smṛitî.

The work which is known as the *Yájṇyavalkya-Smrìtî* is the Code of Laws as propounded by that sage and as understood by the followers of the Yãjñyavalkya School; and, as is the case with the *Manusmrìtì*, the *Yájṇyavalkya Smrìtî* also appears to have been written by a pupil of he sage (see page 1, line 10, Volume I).

Very little has yet been known or discovered about the sage from whom present *Smrìtî* has emanated. There is a reference to a work n *Yoga-Sutra* "by me" in Verse 110 of the Prâyaschìttâdhyâya, nd Vìjñanes'vara in his commentary on the verse explains it to have reference to the *Brihadâranyakopanishad* (see page 213, line 11, lume I). It is yet uncertain when the sage *Yãjṇyavalkya* lived and ourished.

The following short table will show the books and authors which occupy an important place in the *Yajnyavvlkya School*:—

Yâjnyavalkya Smrïti.

Commentaries by

Vis'warúpa. S'úlapáṇî. Vîjñánes'wara. Apârarka.

In addition to these, which are regular commentaries on the Smrîtî of Yájñàvalkya, are other works, which although they do not profess to be the commentaries as such, yet follow the main line adopted in the Smrìtî. These are :—

(1) The Vîra-Mîtrodaya, by Mîtrà-Mîsra.

(2) The Bhagavantabhaskara by Bhaṭṭa Nîlakantha and several others.

The Mîtâksharâ by Shri Vîjñâneswara.

It appears, from the account given by the author himself, that the work was written at Kalyâṇa—a place near Bedar in the Daulatàbád District of His Highness the Nizam's Territory—under the auspices of King Vîkrama, who was then the ruling monarch of the territory (1127 A.D.).

The Mìtâksharâ is a running commentary by *S'ri Vijṇânes'wara* on the Smritî of Yâjñavalkya. Each *s'loka* of Yájñavalkya is followed by the commentary of Vìjñánes'warà. In some places several verses are grouped together and a combined commentary is offered on all these as will appear from the text printed in Volume I. The translation publishe in the present volume is a faithful representation of the original as it is. The division into chapters, sections and paragraphs observed in th translation of Colebrooke, has no warrant in the original text.*

---

* See note on page 169, infra.

In order that the learned reader may be able to follow accurately the text and the commentary, he may note the method which is used in this book. It is this:—

(1) **Thick Black type** is used—

- (*a*) For the translation of the original verses in the text of **Yâjñavalkya.**
- (*b*) For the transliteration of specific words from *Yâjñavalkya* as selected by *Vijnânes'wara* for the purpose of explanations and gloss.
- (*c*) For the names of the several works or of sages referred to in the Commentary.

(2) The translation of words transliterated as in (I) (*b*) has been printed in *Italics*.

(3) Each verse of *Yâjñavalkya* is indicated in bold type by the words **Yâjñavalkya Verse** and is immediately followed by a translation of the *Mitâkasharâ* thereon. Such portion is introduced by the words **Mitâkasharâ** in thick black type at the commencement.

(4) The system of transliteration has been followed as indicated in the table appended herein.

The undersigned desires to acknowldge his deep obligations to his friend Mr. A. H. Borwankar, B.A., for the preparation of the Index.

5th June 1920.
Girgaon, Bombay.

J. R. GHARPURE.

Key to Abbreviations and References.

Aparárka=Means the Yájñavalysmriti with the commentary of Aparárka as published in the Anandś'rama.

Apastamba=Mysore series.

Baudhàyana—Bombay Sanskrit series.

Gautama—Anandasrama series.

Jimuta-Vahana—Calcutta Edition

Manu—Manusmriti.

Mayukha—No. XIV of this series.

Nàrada—Dr. Jolly's Edition

Panini—Sutras of

Yãjñavalkya—No. I of this series.

I. L. R.—Indian Law Reports series.

I. A.—Law Reports, Indien Appeals.

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PREFACE.

As announced in the Prospectus which is reproduced on pages 2 and 3 of the cover of this issue, the first number of the "Collections" is placed before the Learned Reader. From a note, which has purposely been made as short as possible, the reader will have an idea of the extent of the field of inquiry that is open before a student of Hindu Jurisprudence, as also of the scope and general plan of the work of this Magazine. It is proposed in these pages to cover the entire field of that branch of Sanskrit Legal Literature which touches, directly or indirectly, the Principles of the Hindu "Positive Law" (धर्मव्यवहारशास्त्र). In placing the material before the Reader, the entire texts will be given with their literal English Translations. All observations, and deductions therefrom, will form a distinct chapter by itself in each case. As the texts printed in Sanskrit, are as a rule, settled by reference to manuscripts of each work, the various readings found in manuscripts will be indicated in footnotes by means of figures marked against the reading adopted or settled, thus leaving full facilities to the learned reader for making his own choice of texts. Each completed Work will be issued finally with a Title page, List of Contents, Index, &c.

This (*i. e.* the first) Part has been issued with the Sanskrit texts only, without any English translation, as it was not possible to fix the paging of the Sanskrit portion so as to make it suitable for reference in the English translation portion. It has been found by experience that there must always remain on hand a balance of at least 100 pages of Sanskrit matter. This number contains, in all, 88 pages of Sanskrit matter; in the Next number there will be 64 pages of Sanskrit matter with 36 of English translation; so that it will not be till the Third number is reached that there will be an equal division of Sanskrit and English portions with 50 pages for each. As there will be a sufficient balance of Sanskrit matter by the time the Third number is reached, that and the following numbers will be issued with an equal distribution of English and Sanskrit matter.

As announced in the prospectus, which was first issued in December 1908, the first number was to have been published in March last. But difficulties, too numerous to be mentioned, intervened, and at one time the idea itself was in danger of being abandoned. As circumstances, however, would have it, things changed, and the first Part has now been issued forth.

It is necessary, however, to indicate some of the difficulties which can vanish by co-operation and sympathy alone. The first and the foremost difficulty is that of getting manuscripts; and good, reliable manuscripts. The undersigned takes this opportunity of expressing his deep obligations to those gentlemen who have given him material help in procuring very valuable and important manuscripts, *viz.*, to the Hon'ble Mr. Justice N. G. Chandavarkar, Mr. V. K. Bhatavdekar of Bombay, Mr. Hari Narayan Apte of the Anandashram, Poona, and Professor V. S. Ghate of the Deccan College, Poona. He is also obliged to the Director Public Instruction, Bombay, for allowing him facilities for obtaining loans of manuscripts from the very valuable collection at the Deccan College, as also to Sardar Vinayakrao Dhundiraj Bivalkar of Alibag, Mr. Gajendragadkar Shastri of Satara, and Mr. Lakshman Shastri of Jaipur, for loans of Manuscripts in their possession. It is a source of encouragement and satisfaction that many more gentlemen and Sardars in the Deccan have very freely promised loans of Manuscripts in their collections whenever required. But the real difficulty is about those who, having certain very valuable manuscripts in their possession, are unwilling, and in some cases, positively opposed to part possession of these books on any account. It is therefore the most earnest request of the undersigned to all those gentlemen who have in their possession any collection of old Sanskrit manuscripts, as also to those who know of the existence of any such collection anywhere, to oblige him by giving him all possible facilities for procuring these manuscripts either on loan or by absolute gift or purchase. In obtaining loans from large and important collections, it is but proper that some sort of assurance must exist for a careful preservation and handling of the manuscripts, and for a safe restoration of the same in the same condition in which they were, at the time when the loan was issued; and the undersigned is prepared to pass such undertakings as may be necessary. In this connection it may be mentioned that all manuscripts obtained by loan are preserved and used with special care.

In conclusion, the undersigned begs to thank all the gentlemen who have consented to be placed on the *Advisory Board*, as also to those who have promised their co-operation in the matter of translation.

All suggestions concerning the magazine will be thankfully accepted and considered.

GIRGAON, BOMBAY,
August 1909.

J. R. GHARPURE,
Editor.

A NOTE ON THE HINDU LAW TEXTS.

I.

Considering the volume of literature that has appeared on the important topic of "*the Sources of Hindu Law,*" it would be unnecessary, and even superfluous to enter upon a discussion of the same subject again; and in the following pages special care is taken to avoid this. But, although unnecessary and superfluous as a general discussion, it is very necessary and essential, for a proper understanding of the aim, purpose and scope of this Magazine, that a summary view of the Sanskrit legal Literature be taken.

Sources of Hindu Law. Five groups.

All systems of laws have for their origin two main sources *viz.* the *written* and the *unwritten*; and Hindu Law is not an exception to this general rule. Keeping aside for a time the unwritten law, the written portion of Hindu law may be broadly grouped under *five heads*[1] *viz* :—(1) the *Sruti*, (2) the *Smriti*, (3) the *Purâṇas*, (4) works accessory to the *Sruti* and the *Smritis*, (5) and other miscellaneous sources, *e. g.* the *Tantras*, the *Pancharâtras*, the *Âgamas* &c.

Sruti or Vedas.

A. Taking each one of these groups in order, first comes the *Sruti* or the *Vedas*. The word *Sruti* is derived from the root *Sru* to hear, it means, what was heard:—The *Sruti* therefore is revealed Law of the Indo-Aryas. The Vedas are four in number:—*Rich*, *Yajus*, *Sâman* and *Atharvan*. This division of the *Sruti* literature or the *Vedas* is from the point of view of the followers, and is given in the chronological order. Taking all the four *Vedas* together, as a literary group, the sruti literature is severally divided:—

(I) Each of these *Vedas* has its own *Shâkhâs* and *Upashâkhas*.

(II) *Secondly* there is the division into (1) *Samhitâ*, (2) *Brâhmaṇa* and (3) the *Âraṇyakas*, regulating the different stages of the ceremonial.

The five-fold division of the Sruti under the Mimansa.

(III) Then comes the division of the *Sruti* according to its contents. The entire Veda has been declared to treat of Dharma (**वेदो धर्ममूलं**); *i. e.* acts of duty, foremost among these being sacrifices. The *Mimansa* starts with the assumption as to the binding character of the letter of the Veda, and divides the *Vedic* letter into (1) *Vidhi* or injunctions, (2) *Mantras*,

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[1] वेदोऽखिलो धर्ममूलं स्मृतिशीले च तद्विदाम् । आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ॥ **मनुस्मृतौ** अध्याय २ श्लोक ६) ॥. **याज्ञवल्क्यस्मृतौ** (अध्याय १ श्लोक ७) ॥

(3) *Nâmadheyas* (names), (4) *Nishedhas* (prohibitions) and (5) *Arthavâdas* [1] (explanatory passages). This division excludes the *Upanishads* which, together with the five divisions stated above, make up the whole Vedic literature. Every word in the *Veda* must fall under one or other of these groups.

Vidhi.

(1) Among the five divisions given above, the first and the most important is the *Vidhi* [2] or an injunction, which impels a man to perform a certain action in expectation of a certain result. *e. g.* **स्वर्गकामो यजेत** (svargakamó yajéta) —'a man desirous of paradise is to sacrifice.'

These injunctions are of four kinds:—

Utpatti-vidhi.

(*A*) the first is the *Utpatti -vidhi* [3] or the originative injunction. *e. g.* **अग्निहोत्रं जुहोति** (agnihotram juhoti)–'he is to perform the agnihotra oblation.'

Viniyoga-vidhi

(*B*) the second class is what is called *Viniyóga -Vidhi* [4] or injunction by application. *i. e.* an injunction which intimates the connection of some subsidiary matter with some principal matter. *e. g.* **दध्ना जुहोति** (dadhnâ juhoti) meaning **(दध्ना होमं भावयेत्** —'he is to effect the oblation by means of sour milk') in this passage **दधि**—sour milk is an **अंग**, a subsidiary matter, of the **अग्निहोत्र**. Injunctions of this kind are assisted by six means of proof, *viz.* *s'ruti* (direct statement); *linga* (power); (*vâkya*) (sentence or syntactical connexion); *prakarana* (interdependence); *sthâna* (place or order); and *Samâkhyâ* (name). Applicatory injunctions, assisted by these six means of proof, intimate subsidiary relation, consisting in its being accomplished by the action of some agent engaged in the pursuit of some other result, or (the subsidiary position) is expressed by the word **पारार्थ्य**—*pârârthya*—existing for the purpose of something else. [5]

Prayoga-Vidhi.

(*C*) The third is the *Prayoga-Vidhi* [6] or the injunction of performance. It is that injunction which intimates speediness of performance. Absence of delay is secured when a fixed order is determined about the performance of different actions making up the entire performance. Thus the 'injuction of performance' is also defined as that injuction which teaches the order of the subsidiaries [7].

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[1] स (वेदः) च विधिमन्त्रनामधेयनिषेधार्थवादभेधात**पञ्चविधः**। [2] अज्ञातार्थज्ञापको वेदभागो **विधिः**। [3] कर्मस्वरूपमात्रबोधको विधिरुत्**पत्तिविधिः**। [4] अंगप्रधानसंबंधबोधको विधि**र्विनियोगविधिः**। [5] एतस्य विधेः सहकारभूतानि षट् प्रमाणानि श्रुतिलिङ्गवाक्यप्रकरणस्थानसमाख्यारूपाणि । एतत्सहकृतेनानेन विधिनाऽङ्गत्वं परोद्देशप्रवृत्तकृतिसाध्यरूपं पारार्थ्यपरपर्यायं ज्ञाप्यते । [6] प्रयोगप्राशुभावबोधको विधिः **प्रयोगविधिः** । [7] अत एवाङ्गानां क्रमबोधको विधिः प्रयोगविधिरित्यपि लक्षणम् ।

Adhikara-vidhi.

(*D*) The fourth is the *adhikâra-vidhi*[1] or injunction of claim or qualification *i. e.* an injuction which intimates the ownership with regard to some result which is brought about by some action. *e. g.* **यजेत स्वर्गकामः**—'he who is desirous of paradise is to sacrifice;' **यस्याहिताग्नेरग्निर्गृहान् दहेत्सोऽग्नये क्षामवतेऽष्टाकपालं निर्वपेत्**—'he whose house Agni should burn down after he has constructed the holy fires, is to offer to the merciful Agni a cake on eight postherds.'

Mantras.

2. The *mantras*[2] serve to recall to memory the matters connected with sacrificial performance. By this their property of recalling to memory the matters mentioned, they have a purpose, and it must not be supposed that their enunciation merely tends to produce some unseen result, as it would be improper to assume merely an unseen result, while a visible result exists. The discussion under this head gives rise to the terms **अपूर्वविधि**, **नियमविधि**, and **परिसंख्याविधि**. These have been defined as follows:—

विधिरत्यन्तमप्राप्तौ नियमः पाक्षिके सति ।
तत्र चान्यत्र च प्राप्तौ परिसंख्येति गीयते ॥

Vidhi, Niyama and Parisankhya.

"An injunction (*Vidhi*) takes place when something is absolutely non-established; an injunction of necessary arrangement (*Niyama*), when one alternative is already established; when both alternatives are already established, the injunction required is called limitation (*parisankhyâ*)."

To put it more clearly: that kind of injunction which establishes something not established by any other means of proof is called an injunction of something new, *apurva Vidhi*, or simply, *vidhi*, *e. g.* **स्वर्गकामो यजेत** 'he who is desirous of paradise is to sacrifice.' That kind of injunction which establishes something that is partially non-established is called an injunction of necessary arrangement (*niyama-vidhi*). And that kind of injunction which has the purpose of excluding one of two alternatives, both of which are established by some other means, is called an injunction of limitation (Parisankhyâ-vidhi).[3]

Namadheyas.

3. The *Namadheyas*[4] or Names (as forming one of the constituent parts of the Veda) have a purpose, by defining or limiting the matter enjoined. *e. g.* **उद्भिदा यजेत पशुकामः** 'he who is desirous of cattle is to sacrifice with the udbhid, (*i. e.* to perform the sacrifice called *udbhid*). In this passage, by pointing out a certain result, a sacrifice not established elsewhere, is enjoined. As it does not enjoin sacrifice in general, it must be assumed to enjoin a special sacrifice.

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[1] कर्मजन्यफलस्वाम्यबोधको विधिर**धिकारविधिः** । [2] प्रयोगसमवेतार्थस्मारका **मंत्राः** । [3] उभयोश्च युगपत्प्राप्तावितरव्यावृत्तिपरो विधिः **परिसंख्याविधिः** । [4] **नामधेयानां** च विधेयार्थपरिच्छेदकतयाऽर्थवत्त्वम् ।

Nishedha.

4. The fourth subdivision of the *Veda* is *Nishedha*[1] or prohibition. By prohibition is meant sentences turning off man. Just as an affirmative injunction brings about the desired result by instigating a person towards it, so a prohibitory injunction *e. g.* **न कलञ्जं भक्षयेत्** 'he is not to eat *kalanja,*' is instrumental in bringing about the desired result by turning a man off from it.

5. **Arthavâda,** (explanatory statement), is the fifth of the above divisions. Sentences whose purport is either praise or blame are called *arthavâdas*[2] These are of two[3] kinds *viz.* Compliments of (1) *Vidhi* passages, or, of (2) *Nishedha* passages.

Examples:—(1) **वायव्यं श्वेतमालभेत भूतिकाम इत्यादिविधिशेषस्य वायुर्वै क्षेपिष्ठा देवतेत्यादेर्विधेयार्थप्राशस्त्यबोधकतयाऽर्थवत्त्वम् ।** The passage "Vâyu indeed is the swiftest divinity &c."—forming a compliment of the injunctive passage "he who is desirous of prosperity is to offer a white animal to *Vâyu* &c."—has the purpose of intimating a glorification of the matter enjoined.'

„ (2) **बर्हिषि रजतं न देयमित्यादिनिषेधशेषस्य सोऽरोदीद्यदरोदीत्तद्रुद्रस्य रुद्रत्वमित्यादेर्निषेधस्य निन्दितत्वबोधकतयाऽर्थवत्त्वं**—'The passage"—"he howled; that he howled that is Rudra's Rudratwa &c."—which forms a complement to the prohibitory passage, "silver is not to be given on the sacrificial grass &c."—has a purpose by intimating the blameworthiness of the matter prohibited,

Upanishads.

6. The *sixth division,* which, together with the five divisions mentioned above, goes to make up the whole of the Vedic literature is the *Upanishad* **उपनिषद्.** Lit: (from **उप+नि+सद्**) —Knowledge derived from sitting near. Their chief object is to ascertain and elucidate the secret meaning of the Vedas. They are important as the highest philosophical guides.

A (1) Next to *Vedas,* come the Six Vedangas. The *Vedângas*—are works auxiliary and subordinate to the *Vedas,* and designed as aids to the correct pronunciation and interpretation of the text, and the right employment of the *Mantras* in ceremonials.

The *Vedângâs* are *six*[4] in number:

(i) **शिक्षा** (*Shikshâ*)—the science of proper articulation and pronunciation, in separate treatises for each of the different *Shâkhâs.*

(ii) **कल्पः** (*Kalpa*)—ritual or ceremonial.

(iii) **व्याकरणं**—grammer.

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[1] पुरुषस्य निवर्तकं वाक्यं **निषेधः**। [2] प्राशस्त्यनिन्दान्यतरपरं वाक्य**मर्थवादः** । [3] स द्विविधः। विधिशेषो निषेधशेषश्चेति । [4] शिक्षा कल्पो व्याकरणं निरुक्तंछंदसां चयः । ज्योतिषामयनं चैव वेदांगानि षडेव तु ॥

(iv) निरुक्तं (*Nirukta*)—etymological explanation of difficult Vedic words.

(v) छंदस् (*Chhandas*)—The science of prosody.

(vi) ज्योतिष्—astronomy.

B. Next after the *Sruti*, come the *Smritis*. The word is derived from the root स्मृ to remember—and means "what was remembered."

The *Smritis* are divided into

(1) Sûtras and (2) Smritis.

(1) "The *Sûtras* are concise collective summaries of the Vedic literature They might be called Vedic Encyclopedias. They were a collection of the principal facts, principles, and discoveries in all branches of the Vedic Literature, digested under proper titles and arranged under proper heads. Extreme brevity was the great object of the aphoristic style of composition."

These *Sûtras* or aphorisms are divided into three classes:—*viz.* the *Shrauta*, the *Grihya* and the *Dharma* Sûtras. The first two treat of the Vedic ritual and domestic ceremonies, such as those celebrated at birth, marriage, death etc.

The Dharma Sutras.

The third class *i. e.* the *Dharma Sûtras* deal with law, properly so called, and as such, possess a special interest. They are the original foundations upon which the whole superstructure of Hindu Law is based. Judging from the references made to these *sûtras* in the earlier *Smrities*, in the Commentaries thereon, and in the *Nibandhas* or digests, it appears that for every primary *Smriti* there must have existed a corresponding *Sûtra* work of that name.

The Dharma-Sûtras treat principally of the duties and obligations of a householder, the functions of a king or sovereign, the administration of justice, the law of inheritance and other matters ordinarily included in the *Smriti* works.

(2) Next come the group known by the generic term *Smritis*. These may be conveniently divided into

(a) Primary Smritis (b) Secondary Smritis or Commentaries of the Primary Smritis and (c) *Nibandhas* or digests.

(a) PRIMARY SMRITIS:—Many Smritis are spoken of and referred to, but complete editions on a systematic basis are available at the present date, of four *Rishis* only *viz.*

(1) *Manu.* (2) *Yâjnavalkya.* (3) *Parâşara* and (4) *Nârada.* Several editions of these *Rishis* are referred to in works of a later date with the distinguishing prefixes *laghu*, *brihat*,

Mahat, or *Mahâ* attached to them. But complete editions under all these names are not available.

As many as 57 *smritis* are mentioned in the *Vîramitrodaya*[1]; *Yâjnavalkya* also mentions 19 *Rishis* as authors of *Dharmasâs'tra.* The late Rao Shaheb Mandlik has given a detailed list of the references in his Introduction. Fresh discoveries are also being made, as will be seen by a reference to the Reports on Sanskrit Manuscripts issued from time to time, and from the Catalogus Catalogorum issued in Germany.

(b) Of the Commentaries on these *Smritis*, those of *Mêdhâtithi*, *Kûllûka*, *Govindarâja* and *Sarvadnya-Nârâyaṇa* are well known. The first named author, *i. e. Medhâtithi* commands very great respect among students of Sanskrit Legal Literature. In fact, he is the only author who is respected next after the primary *Smritikârs* above enumerated. A cursory glance at his well-known Commentary of the Manu-Smriti, is bound to convince the reader that he was a *jurist* of a very high intellectual type, and was endowed with a thoroughly scientific mind which is discernible throughout his great work.

Among the Commentaries on *Yajnavalkya*, those by *Vishwarupa*, *Vijnâneshwara* and *Aparârka* are well-known. Of these, a small fragment of *Vishwarupa's* work had appeared in the Madras Law Journal, while the two latter have appeared in full print.

The Commentary of *Mâdhavâchârya* on the *Parâshara-Smriti* is well-known. Govinda Bhatta, Nanda Pandita, and Vaidyanâtha have also written Commentaries on this Smriti. The Nârada-Smriti has the two principal Commentaries of Asahâya and Kalyâṇabhatta.

(c) Among the *Nibandhas* or Digests the following are well-known, and constitute in themselves independent sources of Special Legal doctrines prevailing in India. They are the *Dâya-bhâga* by *Jîmuta-Wâhana*, the *Wyawahâra-Mayûkha* by Bhatta Nîlakhantha, the *Vivâda Ratnâkara*, *Madana-Pârijâta* and several others. The Vîramitrodaya is a work which occupies a position midway between the (b) and (c) classes. As this note does not purport to give in detail all the works, available or known, on each of the several branches specified above, no further list is necessary.

As has been observed in the case of *sruti*, a *smriti* must possess one or more of the following characteristics. That is, it is either a **दृष्टार्थी, अदृष्टार्था, उभयार्था, न्यायमूला** or **अनुवादमूला.**[1]

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[1] See Mandlik. Introd. XIV; P. 18. Chowkhamba Sanskrit Series No. 103.

C. The next group of texts for Hindu Law as its sources, are the *Purânas.* These have been judicially recognised as authorities for determining the true aspect of certain questions arising under Hindu Law.[2] ' Modern European writers have been inclined to disparage unduly the authority of the Purânic lists, but closer study finds in them much genuine and valuable historical tradition,[3]

There are several classes of the *Purânas,* such as the Mahâpurânâs Purânâs, and Upapurânâs. The principal Puränas are eighteen in number. These and the other puranas are given in the note below.[4]

The characteristics of a Purâna are given in the Matsya-Purâna as follow :—

" सर्गश्च प्रतिसर्गश्च वंशो मन्वंतराणि च ।
वंशानुचरितं चैव पुराणं पंचलक्षणम् " ॥

" A Purâna treats of 5 topics *viz.* the creation of the universe, its destruction and renovation, the genealogy of gods and patriarchs. The reigns of the several Manus, and the history of the (solar and lunar) races."

Nyaya and Mimansa.

D. Closely following the groups **A.** and **B.** are the works that are included in this group. *Yâjnavalkya* has grouped these together with the Purânas, Vedâs, Vedângas and other Dharma-S'âstra works.

" पुराणन्यायमीमांसाधर्मशास्त्राङ्गमिश्रिताः ।
वेदाः स्थानानि विद्यानां धर्मस्य च चतुर्दश ॥ १. ३. "

' The *Vedas,* along with the *Purânâs,* the *Nyâya,* the *Mimânsâ,* the *Dharmas'âstra,* and the Angas are the fourteen seats (or sources) of knowledge and duty.' I. 3.

Nyâya is the science and rules of Logic, and *Mîmânsâ* is the science and rules of interpretation. These rules were first established and utilised

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1. See Vîramitrodaya, Achârâdhyâya Introduction-Chowkhamba Series No. 103. P. 19. **2.** Ganga Sahai *vs.* Lhekhraj Singh I. L. R. 9 All 322. **3.** See Vincent A Smith's Early History of India.

4. **अष्टादशपुराणानि** पुराणज्ञाः प्रचक्षते । ब्राह्मं पाद्मं वैष्णवं च शैवं भागवतं तथा ॥
तथाऽन्यन्नारदीयं च मार्कण्डेयं च सप्तमम् । आग्नेयमष्टमं चैव भविष्यं नवमं स्मृतम् ॥
दशमं ब्रह्मवैवर्त्तं लैङ्गमेकादशं स्मृतम् । वाराहं द्वादशं चैव स्कान्दं चात्र त्रयोदशम् ॥
चतुर्दशं वामनं च कौर्मं पञ्चदशं स्मृतम् । मात्स्यं च गारुडं चैव ब्रह्माण्डं च ततः परम् ॥

उपपुराणानिः—आद्यं सनत्कुमारोक्तं नारसिंहं ततः परम् । (विष्णुपुराणे)
तृतीयं नान्दमुद्दिष्टं कुमारेण तु भाषितम् ॥
चतुर्थं शिवधर्माख्यं साक्षान्नन्दीशभाषितम् । दुर्वाससोक्तमाश्चर्यं नारदीयमतः परम् ॥
कापिलं मानवं चैव तथैवोशनसेरितम् । ब्रह्मांडं वारुणं चैव कालिकाह्वयमेव च ॥
माहेश्वरं तथा साम्बं सौरं सर्वार्थसंचयम् । पराशरोक्तमपरं मारीचं भार्गवाह्वयम् ॥ (कौर्मे)

towards the interpretation of the Vedâs, in matters ritualistic and philosophic. Although in their origin these rules were first applied to interpret the Vedâs, these rules and their special method of application in matters of interpretation, are freely resorted to, in interpreting a Smriti or other text, the meaning of which is uncertain, or open to a double interpretation. It is thus, that the rules of logic, and of Interpretation, have obtained considerable importance as aids to the interpretation of the Texts. The Mîmânsâ Literature is not generally known. It is one of the objects of this Magazine to give a connected short summary of both these branches of Sankrit learning. But, before that will be accomplished, it would be necessary, on several occasions, to have a general rough idea of the several terms used in these works, and imported into the *Smriti* works as 'Terms of Art.' With this fact in view, a short summary of these terms has been given above, (at pages-iv–vi) with short explanations and illstrations appended to each. The excellence of Hindu Philosphy has attracted a sufficiently large number of students, local as well as foreign, to the study of the *Nyâya*. But the *Mîmânsâ* has not been equally fortunate. The preponderence of the ritualistic discussion, may perhaps be responsible for this comparative partiality on the part of scholars. But it must be remembered, that, although these works address themselves to the Vedic ritual, the principles of interpretation laid down are very general and are of universal application. "The Mîmânsâ certainly deserves greater attention than it has hitherto received. It has indeed none of the attractions which the other *darsanas* [1] derive from the speculative character of their contents. Its scope is limited, and the nature of the investigation in which it is engaged leaves no room for high flights of the imagination. But it possesses counterbalancing advantages. Its subject matter is of a positive nature, its method is sound, and its reasoning in most cases convincing.[1]"

Tantras, Pancharatras and Agama.

E. The last of the divisions of works resorted to as authorities on Hindu Law are the *Sânkhya* and *Yoga* works, and the *Tantras*, *Pancharatras* and the *Âgama* works. These works have been laid down as authorities in a text ascribed to *Yâjnawalkya* and cited in the *Vîramitrodaya*. Extracts from this and other references given below will show the authoritative character of these works.[2]

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[1] See Dr. Thibaut's introduction to the Arthasangraha pp. XIV–XV.

[2] **याज्ञवाल्क्यः ।** सांख्यं योगः पञ्चरात्रं वेदाः पाशुपतं तथा । अतिप्रमाणान्येतानि हेतुभिर्न विरोधयेत् ॥
महाभारते । पञ्चरात्रविदो मुख्यास्तस्य गेहे महात्मनः । प्रापणं भगवत्प्रोक्तं भुञ्जते चात्र भोजनम् ॥
तस्य प्रशासतो राज्यं धर्मेणामित्रघातिनः ।
वायुसंहितायां । शैवागमोऽपि द्विविधः श्रौतोऽश्रौतश्च संस्मृतः । श्रुतिसारमयः श्रौतः स्वतन्त्र इतरो मतः ॥
साम्बपुराणे । श्रुतिभ्रष्टः श्रुतिप्रोक्तप्रायश्चित्ते भयं गतः । क्रमेण श्रुतिसिद्ध्यर्थं मनुष्यस्तन्त्रमाश्रयेत् ॥
श्रीभागवते । तेनोक्तं सात्वतं तन्त्रं यत् ज्ञात्वा मुक्तिभाग्भवेत् । यत्र स्त्रीशूद्रदासानां संस्कारो वैष्णवः स्मृतः ॥

II.

Having so far indicated very briefly the extent of the Literature known as the Sanskrit Law Texts, it is proposed to indicate, equally briefly, the method intended to be adopted in this Magazine, in the matter of selecting or publishing works falling under one or more of the several groups specified above.

The chief object in starting the magazine was to cover the whole field of Legal Literature reviewed above. But it is evident, for obvious reasons, that this cannot be literally carried out. Nor would it do to leave any one of the branches or groups untouched.

Among these, the importance of the second of the above 5 groups, *viz.* the *Smritis* is very great. And these will claim priority over all others. With the exception of the *Sûtras* and the older *Smritis*, each work is divided into three Books or chapters *viz.* the chapter on.

(1) *Âchâra* or rules of conduct,

(2) *Vyawahâra* or rules of Positive Law and,

(3) *Prâyaschitta* or rules of penance.

And in taking up works for publication, those works which devote themselves exclusively or prominently to the second or the *Vyawahâra* ought to be given preference. It is on this principle, that the first Number has for its contents the first 62 verses of *Yâjnavalkya*, with *Vijnâneswara's Mitâkshârâ* commentary thereon, and the two commentaries of *Bâlambhattî* and *Subodhinî* on the *Mitâksharâ*. Besides the three works which appear in the first Number, other works also bearing on the *Vyawahârâdhyâya* have been undertaken and are at present under preparation. These are the much revered commentary of *Medhâtithi* on *Manu-smriti*, the *Parâshara-Mâdhava* and the *Vîramitrodaya*. It is also proposed to take up the *Dâyabhâga*, the *Smritichandrikâ* and *Vishwarûpa's Tîkâ* as soon as a sufficient number of manuscripts are secured.

An appeal for Manuscript copies.

Of the three works now placed before the learned reader, two *viz.* the Mitâksharâ, and the Bâlambhattî are based on the printed editions and on manuscripts collected from different sources. The third *i. e.* the *Subodhinî* is based entirely on manuscripts. The undersigned is extremely thankful to those gentlemen who have obliged him with a loan of the manuscripts of these works. He will be further obliged if more manuscripts are placed at his disposal by those who have the good luck to possess them. In particular, he is very much in need of manuscripts of the *Subodhini* and the *Bâlambhattî* on the *Achâra* and *Prâyaschittâdhyayas*, and he takes this opportunity of earnestly requesting all friends of Sanskrit and of Law, to help him in the task of securing these and other manuscripts on works specified above.[1]

After finishing the *Vyawahâra Adhyâya*, the chapters on *Âchâra* and *Prâyâschitta* will be taken up; and then the works will be issued to the public as completed works containing all the three chapters with their translations.

As regards the other groups, it is proposed to make a selection of all the passages directly or indirectly bearing on Law, and publish these separately under the title of each work. It is proposed, in particular, to select one or two typical books from the *Mîmânsâ* Literature, and to publish these with their translations, and with an exhaustive introduction and notes, so that the student will have a tolerably fair idea of the usefulness and importance of this branch of Sanskrit learning. It will also supply important materials to the student of Comparative Legislation and Jurisprudence.

With these main objects in view, the Magazine has been started on lines broadly indicated above. The undersigned is fully aware of the difficulties that lie in the way, as also of the responsibility undertaken. But a firm resolve to do the work with steady endeavour, backed up by the sympathy and co-operation of the appreciating public, is bound to overcome all obstacles. It would not therefore be out of place to solicit the sympathy, co-operation and support of all the learned readers, fortunate representatives of old families, collectors and keepers of old records and manuscripts, and lastly the wealthy citizens of this vast Country, and of the Continent for this task.

संहतिः कार्यसाधिका.

J. R. GHARPURE,

Editor.

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[1] The following manuscripts are immediataly required, as some of the works are under preparation, and others are soon to be undertaken.

मेधातिथिटीका on मनुस्मृति.
बाळंभट्टीटीका on मिताक्षरा—(आचार and प्रायश्चित्त)
सुबोधिनी or विश्वेश्वरी टीका on Do (Do Do)
विश्वरूपकृतटीका on याज्ञवाक्यस्मृति.
स्मृतिचंद्रिका.

EDITOR'S PREFACE TO THE SECOND NUMBER.

The Second Number of the First Year is now placed before the public. As announced in the First Number, Englsh translations of portions of Sanskrit texts printed in the First Number are given in this number. The third Number, which will be due in the month of Juue 1910, will contain equal portions of Sanskrit texts and English Translations. The Editor takes this opportunity of cordially thanking all who have extended their sympathy and support with a ready response to the call made.

As the magazine was started in the month of August 1909, an odd portion of the year, the financial year of the magazine, as it now stands, is likely to cause general inconvenience and confusion. *To obviate this difficulty and inconvenience, it is proposed to print two extra numbers during the year 1910,* so that, at the end of the year 1910, the subscribers will have received eight parts, containing 800 pages in all, and the year 1911 will commence as the Third Year of the Magazine. The subscription for the second year will be recovered by V. P. P. along with the Fifth Part or the First Number of the Second year. It is hoped that by this arrangement, a greater portion of the *Mitâksharâ*, *Bâlambhaṭṭi*, and *Subodhini*, will have been published with the English translation, and made available for use by the public by the end of the year 1910.

EXPLANATORY NOTE TO THE ENGLISH TRANSLATION.

The English Translations given in this number are prepared and settled under the supervision of a select committee of the Advisory Board. Though, therefore, the translator is responsible for all the faults that may have remained therein, the sole credit for all its merits is due to the members of this committee.

The translator has freely used all English translations of Sanskrit legal works, made and published hither-to and he takes this opportunity of expressing his deep obligations to all those authors. As far as was possible, old translations have not been disturbed, but care has been taken not to sacrifice accuracy and idiom to a blind adherence to the past translations, so that wherever a departure was found to be necessary, a new translation differing entirely from the old ones, has been put in.

In order that the learned reader may accurately follow the texts and their translations, the following **Special Features** may be noted —

A. Thick black type is used.

- **(1) For the translation of the original verses—***viz.* **the text of** *Yâjñavalkya* **and.**
- **(2) For the transliteration of specific words from** *Yâjñavalkya* **selected by** *Vijñânes'wara* **for the purpose of explaining the meaning and adding his own comments thereto.**
- **(3) The names of the several sages cited or referred to in the body of the commentary have also been indicated by the same type.**

B. Words and expressions, transliterated as indicated in **A 2,** have been translated and the translation of such words is printed in *italics.*

C. Each verse of *Yâjñavalkya,* is indicated by the words "**Yâjñavalkya Verse**" and is immediately followed by a translation of the *Mitâksharâ* commentary thereon. Every such portion is introduced by the words "**Mitâksharâ**" in thick black type at the commencement.

D. The same method is adopted in printing the translation of the *Bâlambhaṭṭî* and the *Subôdhinî,* with this necessary difference, that instead of having in thick black type the quotations from *Yâjñavalkya,* that type is used for the quotations from the *Mitâksharâ* of which *Smṛiti* these two works purport to be the commentaries.

The English translation is based on the Sanskrit texts published in this Magazine. The paging given in brackets refers to the pages of the Sanskrit portion of the book already printed and published in this magazine.

The Original Texts in the three works under translation are based on manuscripts, a detailed account of which will be given in the General Introduction which will follow the completion of these works.

The pages indicated in rectangular brackets in the body of the translations refer to the corresponding pages of the Sanskrit portion. In the translation of ths *Bâlambhaṭṭi* and *Subodhini,* the exact place of quotation from the *Mîtâksharâ* is indicated by the figures of the page and of the line from where the quotation is taken. The reference to the Sanskrit portion of the Mitâksharâ is indicated by figures in the margin or below the line; while the portions of the English translation referred to of the same are indicated by figures in the body.

The following illustrations will make this clear.

THE MITÂKSHARÂ (*Translation Page* 5 *lines* 31–34).

‘[P. 3. L. 15]. Moreover let it not be supposed in consequence of the text of *Gautama* &c'.—This means that this is the translation of the text occurring at page 3 line 15 of the Mitâksharâ as printed in this magazine.

THE BÂLAMBHAṬṬÎ (*Translation Page* 2 *line* 10).'

‘[Mit P. 1. L. 11]—ANYENETI (*by another* &c. p. 1. l. 15-16).
This means, that the expression ANYENETI in Sanskrit is at page 1. L. 11, and its translation at page 1 L. 15-16 of the Mitâkshârâ translation in this magazine.

NOTE:-References to Sanskrit Mitâksharâ will be given in the notes below the line from the next part.

J. R. GHARPURE.
Editor.

THE TRANSLITERATION TABLE.

(For the Collections of Hindu Law Texts series).

VOWELS.			CONSONANTS.					
Nâgari Equivalents.			Nâgari Equivalents.			Nâgari Equivalents.		
अ	*a*	as in rur*a*l.	क्	*k*	as in *k*ill, see*k*.	न्	*n*	as in *n*ot, *n*ut.
आ	*â*	„ „ f*â*ther.	ख्	*kh*	„ „ in*kh*orn.	प्	*p*	„ „ *p*ut, sit.
इ	*i*	„ „ l*i*ly.	ग्	*g*	„ „ gun, get, dog.	फ्	*ph*	„ „ u*ph*ill.
ई	*î*	„ „ pol*î*ce.	घ्	*gh*	„ „ lo*gh*ut.	ब्	*b*	„ „ *b*ear, ru*b*.
उ	*u*	„ „ b*u*sh.	ङ्	*ṅ*	„ „ si*ṅ*g, ki*ṅ*g, si*ṅ*k.	भ्	*bh*	„ „ a*bh*or.
ऊ	*û*	„ „ r*û*de.	च्	*ch*	„ „ *Ch*ur*ch*.	म्	*m*	„ „ *m*ap, ja*m*.
ऋ	*ṛi*	„ „ mer*ṛi*ly.	छ्	*chh*	„ „ Chur*chh*ill.	य्	*y*	„ „ *y*et, lo*y*al.
ॠ	*ṛî*	„ „ ma*ṛî*ne.	ज्	*j*	„ „ *j*et, *j*ump.	र्	*r*	„ „ *r*ẹl, yea*r*.
ऌ	*lṛi*	„ „ revel*ṛi*,revelry.	झ्	*jh*	„ „ hedgehog he*jh*og).	ल्	*l*	„ „ *l*ull, *l*ead.
ॡ	*ḷṛî*	the above porlonged.	ञ्	*ñ*	„ „ si*ñ*g (si*ñ*g).	व्	*v*	„ „ i*v*y (but like *w* after consonats).
ए	*e*	as in there.	ट्	*ṭ*	„ „ *ṭ*rue.	श्	*s'*	„ „ *s'*ure.
ऐ	*ai*	„ „ *ai*sle.	ठ्	*ṭh*	„ „ an*ṭh*ill.	ष्	*sh*	„ „ *sh*un.
ओ	*o*	„ „ g*o*, st*o*ne.	ड्	*ḍ*	„ „ *ḍ*rum.	स्	*s*	„ „ *s*in, hi*ss*.
औ	*au*	H*au*s as in German.	ढ्	*ḍh*	„ „ re*ḍh*aired (red haired).	ह्	*h*	„ „ hear, hit.
अं	*aṃ*	or aṇ (or *a* and a Symbol of a nasal of the class to which the Consonant following belongs).	ण्	*ṇ*	„ „ dema*ṇ*d.	ळ	*ḷ*	„ „ (sometimes for ड् in the *Veda*)
अः	aḥ	or ḥ where the *Visarga* (:) only is added.	त्	*t*	„ „ wa*t*er(as in Ireland).	ळ्ह	*ḷh*	(„ ढ् „)
			थ्	*th*	„ „ *th*eory, *th*aw.	क्ष्	*ksh.*	
			द्	*d*	„ „ dice.	ज्ञ्	*jñ*	
			ध्	*dh*	„ „ thi*dh*er thi-) *th*er).			

Adopted from Sir M. Monier William's Dictionary, with slight changes.

J. R. GHARPURE.

Editor.

SHRI
YÂJÑAVALKYA-SMṚITI

TOGETHER WITH THE COMMENTARY CALLED

MÎTÂKSHARÂ

OF

SHRI VIJNÂÑÉŚWARA.

SECOND BOOK

ON POSITIVE LAW.

Chapter I.

OF THE RULES OF PROCEDURE IN GENERAL.

Introductory.

The protection of the subjects is the highest duty of a king possessing the (necessary) qualification of anointment &c.; that, (*i. e.* the protection,) however is not possible without (restraining the wicked) punishing the guilty. The detection of the guilty, moreover, is not possible without the administration of justice (Lit. holding a trial). That suits should be tried daily has already been said *viz.* that "a king should attend personally to the administration of justice every day, surrounded by (or with the help of) councillors."[1] The various details of a trial *viz.* its nature, its kinds, and, its procedure have, however, not been described, and the Second Book is being commenced for describing these.

Yâjñavalkya. Verse 1.

The king, divested of anger and avarice, should administer justice, along with learned Brâhmaṇs, in conformity with the principles of legal science."

Mitâksharâ :—**Vyawahârân** &c. (*trials &c.*) a complaint against another and having relation to one's self is a **Vyawahâra.** As for example—where a certain person says that the land &c. is his, and any other also says in contradiction to him, that it is his. The author indicates its (*i. e.* of the *Vyawahâra*) variety by the (use of the) plural. By the word **Nṛipa** (*i. e. king*), the author indicates that this is not the duty of the *kshatriya* order alone, but also of any other

Definition of a trial.

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[1] Verse 360, Âchârâdhyâya.

Brahmanah.

endowed with the authority to govern the subjects. **Pas'yêt**—(*should administer*) &c. is a repetition (by way of corroboration) of what was said before and is intended as laying down a special duty. **Vidwadbhiḥ** (*along with the learned*)—with the (help of) those (who are) well-versed in works on legal seince and the *Vedas*, grammer &c. **Brâhamanaiḥ** (*with Brâhmaṇs*)—not *kshatriyas* or others. By the expression, "with Brâhmaṇs" introduced by the Instrumental case, their subordination is indicated, from the grammatical aphorism 'conjunctive use with *Saha* (the preposition *with*) indicates subordination.' **Pâṇini.** (2-3-19).

Hence, in the case of absence of decision, or of false decision, the fault would be that of the king, and not of the Brâhmaṇs. As observes **Manu**: "A king, punishing the innocent (Lit; unpunishable), and not punishing the guilty (Lit. deserving punishment), brings great infamy on himself and goes to hell."[1] By what procedure (should he try suits)? **Dharmas'âstrânûsâreṇa,** in *conformity* with *Dharma S'âstra*[2] (science of religion and law). and not with the science of politics. The established usage and law of the country &c. have not been separately mentioned, as they form a part of the subject matter of legal science, in so far as they (such usage and law) are not inconsistent with the general principles of legal science. And as the sage **Yâjñawalkya** has said later on, "a custom which is not opposed to law should be carefully maintained, as also the law or usage made or established by the king".[3] **Krôdha-lôbha-vivarjitaḥ** &c., (*Divested of anger and avarice &c.*) When it is established that it (*i. e.* the administration of justice) should be in conformity with the principles of legal science, the mention of the additinal condition (that the king should be) "divested of anger and avarice" is indicative of a *special* injunction (आदरार्थम्)[4]. *Krôdha* (*anger*)—intolerance. *Lôbha* (*avarice*)—excess of greed.

Yâjñavalkya. Verse 2.

"A king should select as his Councillors [5] those persons who have

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[1] Ch. VIII. 128.

[2] For the extent and scope of thh expression *Dharma-S'âstra* see the General Note on the Hindu Law Texts.

[3] Bk. II. 186.

[4] The meaning is that the king is asked by the general law that he should administer justice according to religion and law, but in particular he is asked to cast off all anger and avarice.

[5] The words *councillors* and *assessors* are separately used here to bring out the distinction between नियुक्त (appointed), and अनियुक्त (unappointed). The word सभ्य stands for those who are *appointed* and has been translated as *councillors.*

become accomplished by learning[1] and study, who know the law, who speak the truth, and who are the same to friends and foes alike,"

⊛ [Page 2]

MITÂKSHARÂ. Further; **S'rutêna**—(*by learning*)—by studying the *Mîmânsâ* (the science of Interpretation), grammer etc.; **Adhyayanêna** and also (*by study*)—*i.e.* study of the Vedas; **Sampannâḥ** (*accomplished*); **Dharmajñyâḥ**, (*knowing the religion*), *i. e.* those who know religion and the science of law. **Satyawâdinaḥ** (*who speak the truth*) *i. e.* who have a character for speaking the truth. **Same to friends and foes alike**, unaffected by feelings of hatred, love &c. Men of this description should be invseted as councillors by the king, after conferring upon them gifts, and other tokens indicative of respect, that they may (be able to) attend or sit in the meeting or assembly.

Sabhyas (Councillors) describ-ed.

Although the expression "accomplished by learning and study" has been used without particularisation, still, Brâhmaṇs only (are meant). As says **Kâtyâyana**: "Moreover, he (*i. e.* the King), accompanied by assessors or councillors, who are steady, special scholars, of high parentage, and who are the best of Brâhmaṇs, who are clever in interpreting the meaning of **Dharma Ṣâstra** and who are accomplished in politics." Those to be selected moreover should be three, the plural having been used with a (special) purpose; and also there being a text of **Manu** *viz.* "In the place where three Brâhmaṇs, versed in the Vedas, sit down"[2] **Bṛihaspati**, however, intimating that the councillors should be seven, five or three, observes: "Where, *viprâs* (Brâhmaṇs) knowing the usage of the people and the Vedas, as well as the law, and being either seven, five, or even three, are sitting, that assembly is equal (in Sanctity) to a sacrificial assembly." It should not moreover, be supposed *that* (the words) "accomplished by learning and study" and others, are adjectival of the Brâhmaṇs referred to in the last verse in (the expression) "along with Brâhmaṇs," it being impossible that words having the Nominative and the Instrumental termination at their end, should be connected as an adjective and the word qualified (by it), as also on account of the possibility of the fault of repetition being committed by the use of the word "by the learned". Moreover, **Kâtyâyana** has brought out clearly the distinction between the Brâhmaṇs and the councillors thus:—"A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister, the religious preceptor, the Brâhmaṇs, and the councillors." There, the distinction is that the Brâhmaṇs are not appointed, while the councillors are appointed. Hence also *it* is said "whether appointed or

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The word *assessors* refers to those learned Brâhmaṇs who voluntarily go to a court and are referred to in verse I. above.

[1] *Impartial* to friends and foes as well.

[2] Ch. VIII. 11.

not appointed, he who knows the law should speak"[1] Among these, those who are appointed should advise the king on the facts as they stand, and if he would act otherwise then they should dissuade him, otherwise they would be guilty. **Kâtyâyana** has also said "The councilors who follow him, even when he acts with injustice, are co-sharers with him in it (the injustice) therefore the king should be warned (advised) by them." Of the unappointed, however, the sin occurs only when they speak a falsehood or do not speak at all; not when they do not dissuade the king. As **Manu** has said "either the court must not be entered or the truth must be spoken; a man who either speaks nothing or speaks falsely becomes sinful (guilty)[2]. **Ripau Mitré Chéti,** (*to friends and foes &c.*): by the (use of the) word *cha*; is indicated that the court should also have the attendance of a few merchants for the satisfaction of the people. As says **Kâtyâyana**: "Attended by a few merchants of good family, free from malice, and possessing the qualification of high birth, character, age, good behaviour and affluence and family traditions."

Yâjñavalkya. Verse 3.

3 "By a king who is unable to attend to the administration of justice on account of other engagements, a Brâhmaṇa, knowing all laws, should be appointed (in his place) to work along with the councillors."

Mitâksharâ:—By a king, (**Apas'yatâ**) *unable to attend* to the administration of justice on account of his being engrossed in other work: **Sabhyaiḥ Saha,** (*along with the councillors*) referred to above. **Sarvadharmavit** (*knowing all laws*), all laws *i.e.* laws laid down in the *S'âstrâs*, as also the customary laws; knows *i. e.* (considers) discriminates; such a one is he who knows all laws'; a **Brâhmaṇa** and not a Kshatriya or other *should be appointed* (**Niyoktawyaḥ**) for deciding disputes. Moreover, he should possess the particular qualities laid down by **Kâtyâyana.** Says he—"He should be self-restrained, high-born, impartial, not overawing, calm, god-fearing, religious, and devoid of anger."

In the absence of a *Brâhmaṇa* of this description, he should appoint a Kshatriya or a Vais'ya, but not a S'ûdra. As says **Kâtyâyana**—"Where a Brâhmaṇa is not available he (*i. e.* the king) should appoint a Kshatriya or a ❀[Page 3] Vais'ya who knows *Dharma-S'âstra.* A S'ûdra should be avoided by all means. **Nârada** also has indicated rules of this distinction prominently. "Placing before him *Dharma-S'âstra,* and adhering to the opinion of the Chief Judge, he should decide suits in due order, with a calm mind (or concentrated attention.)" Adhering to the opinion of the Chief

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[1] I. 11.

[2] Ch. VIII. 13.

Judge, and not to his own opinion. As in the expression, 'the king observes the enemies' army with the eyes (in the form) of spies', the 'Chief Judge' is here used in its etymological sense. He who questions the plaintiff and the defendant is a *prât.* and (he) who sifts or discriminates their statements, the inconsistent from the consistent, is a *Vivâkaḥ;* he who is a *prâṭ* as well as a *Vivâka is a Prâdvivâka.* Moreover, it has been said, "He is called **Prâdvivâka,** because, after consulting him, the king, in company with the councillors, decides disputes after an inquiry relevant to the mattar at issue."

Now it may be asked, what should a king do when the Chief Judge and other councillors decide a dispute in departure from the dictates of the Smṛitis? the sage *Yâjñavalkyas says:*

Yâjñavalkya. Verse 4.

4. Councillors acting in departure from the rules of the Smṛitis and doing similar acts, out of passion, avarice, or fear, should each be separately punished with a fine double (in amount of the fine for) the dispute".

Mitâksharâ: Moreover, The aforesaid **Sabhyâḥ** or *councillors,* on account of the uncontrolled sway of *Rajas*[1] or passion, being affected by it. **Râgât,** (*out of passion*), on account of excessive attachment. **Lôbhât,** (*from avarice*), on account of excess in greed. **Bhayât,** (*from fear*), on account of excessive tribulation. **Smṛityapètaṃ,** (*in departure from the Smṛitis*), opposed to the Smṛitis. The term **Âdi** indicates doing something which is in deviation from custom. **Pṛithak-pṛithak,** (*severally*), each one severally. **Vivâdât,** (*of that in dispute*), of the wealth accruing as damages on account of a defeat in the suit; should be punished with *double the fine* **(Dwigûṇam damam);** not (double) of the amount which is the subject matter of dispute. If it were so, there would be the possibility of an absence of fine in disputes regarding adultery or seduction and the like. The use of the words passion, avarice and fear is to limit the double fine to (the cases of) passion &c. only, and not to (extend it to the case of) ignorance, mistake &c.

⊛[P. 3. L. 16.] Moreover, let it not be supposed in consequence of the text of *Gautama,* that 'a king has power over all excepting, Brâhmaṇs,'[2] that *Brâhmaṇs* are exempt from punishment, as the text is intended to be eulogistic only.

As to what has been said *viz,* 'that he (*i. e.* a *Brâhmaṇa*) should be exempted by the king from six (punishments), *viz,* that he should not be killed, imprisoned, punished, exiled, deported or made destitute (deprived of his effects),'[1] that holds in the case of one who is a well-read scholar. 'To one who knows the usages of the people, who is versed in the Vedas and the Vedangas, who is an expert in the art of controversy (or in expounding controversial points), in History and the Purâṇas, who is a constant student of the same, and who follows them in life, who is purified by the 48 purificatory ceremonies,[2] who devoutly observes the three duties,[3] or one who has been trained in the six[4] customary duties of life.'[5] Thus it (*i. e.* the exemption) applies only to one who has acquired a versatility of knowledge as detailed above and not to any Brâhmaṇa merely as such.

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[1] The second of the three qualities *viz. Satva, Rajas* and *Tamas.*

[2] Gautama 11. 1.

Yâjñavalkya. Verse 5.

5 "If one, injured by others in a way which is a violation of the (laws of) Smṛitis and usage, informs the king, that becomes a (fit) subject for a Judicial Proceeding."

Subject Matter of a suit.

Mitâksharâ:—Mârgèṇa, *In a way* opposed to legal science and general usage. **Paraiḥ** (*by others*). **Âdharshitaḥ,** (*injured*), attacked; which, **râjnè** (*to the king*) or to the Chief Judge **Âvêdayati,** (*informs*), respectfully complains. **Chêt** (*in case*). *That* (**tad**), which forms the complaint, is the *subject matter of a judicial proceeding,* (**Vyawahârapadam**). **Vyawahâra** (*judicial proceeding*) is that which has for its component parts, the plaint, the answer, doubt, reasons, deductions, the evidence, the decision and the reasons thereof; its **Pada**~~, its (*i. e. of Vyavahâra*~~) subject. This is its general definition.

That (*Vyavahâra*) morever, is twofold : a plaint founded on suspicion, and a plaint founded on facts. As says **Nârada** "A plaint is known to be of two kinds; a plaint founded on suspicion, and a plaint founded on facts; (on) suspicion in consequence of (defendant's keeping) bad company; (on) facts, when the stolen goods have come to light.[6] By *Hodhâ* is meant, the goods stolen or any other evidence (thereof). By "goods coming to light" is meant, tracing (the offence) by circumstantial or direct proof. A plaint founded on facts is moreover two-fold; (1) Containing the statement of a denial; (2) containing the statement of an active wrong (by the defendant). As *e. g;* "Having taken gold &c.

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[1] Gautama VIII. 12-13.

[2] See Subodhini and notes thereon.

[3] These are: study, sacrifice, and almsgiving (अध्ययनेज्यादानानि).

[4] These are: the three last with the addition of अध्यापनयाजनप्रतिग्रहाः Teaching, officiating at a sacrifice, and receiving gifts. see *Yâjñavalkya* I. 118.

[5] Gautamâ VIII. 4-11.

[6] I. 27.

from me, he (the defendant) does not give it back." "He (the defendant) deprives me of my land &c." **Kâtyâyana** also has said, "who *does not* himself wish to do what is just, or *does* an unjust act."

⊛[P. 4] This (*Vyawahâra*) moreover is divisible into 18 kinds. As says **Manu**[1] "Of these (1) the first is the recovery of debts; (2) deposit (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts. (6) Non-payment of wages (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and his servants; (10) the law of boundary-disputes (11) assault, (12) and slander; (13) theft, (14) heinous offences. (15) Adultery or seduction; (16) duties of husband and wife; (17) partition; (18) and gambling and betting. These are in this world the eighteen topics of Judicial Proceedings. Even these have become multiplied into many more by the varieties of the points at issue. As says **Nârada**:[2] "Their branches amount to one hundred and eight. It (a judicial proceeding) is said to have a hundred branches on account of the multifarioufness of human transactions."

The author points out that by the expression 'if he informs the king' is meant, if he himself voluntarily goes and informs, and not under instigation of the king or his servants. As says **Manu**:[3] "Neither the king or any servant of his shall themselves cause an action (lawsuit) to be started, or hush up one that has been brought by another."[4] **Paraiḥ** (*by others*) *i. e.* by one, two, or many others; the author indicates hereby that a dispute may arise between one man, and one two or many men. The text of **Nârada** *viz*—"Men conversant with law lay down that disputes between one and many, with women, and with servants, are iandmissible as a suit" refers to suits having different canses of action.

By the expression 'informs the king' is also meant that, clad in a decent or simple dress, the plaintiff should inform the king when questioned by him. When the complaint is proper, (*i. e.* according to law), then the summoning of the defendant by sending a seal &c., and the non-summoning of those that are beyond the court's jurisdiction, or exempt from it (as being afflicted with disease) being evident from the context, has not been expressly mentioned. This moreover has been clearly laid down in another Smṛiti "At the (proper) *time*, he (*i. e.* the king or his proxy) should thus inquire of the applicant[5] standing and speaking before him:

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[1] Ch. VIII. 4-7.

[2] I. 20.

[3] Ch. Ch. II. 12. VIII. 43.

[4] The **Bâlambhaṭṭi** and the **Vis'wes'wari** give an alternative meaning thus "nor should he accept a plaiut presented unjustifiably by a party"

[5] plaintiff :-*Lit*: one who pleads his cause in court The reading given in the foot-note is adopted: 'standing in a humble posture.'

Cases where summons may or may not issue.

Exceptions.

what is your suit for, and what your grievance? dont fear, speak, O man! By whom, where, when and for what (have you been troubled)? Thus should he ask one who has come to the court. Thus interrogated, what he speaks (as his grievance) he (*i. e.* the king) should consider along with the councillors and the Brâhmaṇas; and if the complaint be proper or one according to law, (an order bearing) the seal, or a messenger should be sent to summon him (defendant). The king should not cause to be summoned a person who is afflicted with a disease, a minor, the old, one in difficulty, and one engaged in (religious) duties; (nor) a person who would suffer great loss[1] if he were summoned, a person afflicted with pain (caused by the separation of relations); persons engrossed in the king's service, or in celebrating festivals; the intoxicated; persons possessed by evil spirits; idiots or the insane; the aggrieved, or persons who are dependants; (nor) a young and helpless woman, a high born lady, a woman recently delivered, a maiden belonging to the highest tribe *i. e.* a Brâhmaṇi; (because) these females are declared to be dependant on their tribes. A summons is allowed against women upon whom their families are dependant, profligate women, and those who are prostitutes, as also against such as are of low birth or are degraded. Taking into consideration the time and the place, as also the importance or otherwise of the cause, the king may cause even the infirm &c. to be summoned and brought comfortably by means of conveyances.[2] He may even summon, in weighty matters, hermits and the like, who have retired into the woods after notice of the complaint[3] taking care however that he thereby does not give any offence.

Arrest.

The same describes the fourfold division of arrests.

The law of arrests which is plain in itself, has been laid down by **Nârada**:[4] "A plaintiff should arrest a defendant who absconds when the cause is about to be tried, and one who disregards the plaintiff's words, until the legal summons has been issued. Confinement to a place, arrest for a limited time, restrictions regarding travelling and prohibition from a specific act; this is the fourfold division of arrests. One subjected to an arrest must not transgress it. If one arressted at a time proper for arrests, transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly, shall also be liable to punishment. One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity or while in similar predicaments, commits no fault by transgressing his arrest. One about to marry, one oppressed by a disease, one about to offer a sacrifice, one afflicted by a calamity, as also one (already) accused by another, and one engaged in the king's service; (as also) cowherds engaged in tending cattle, cultivators in the act of sowing the crops, artisans while engaged in their own occupations, and warriors during warfare." Arrest means a restraint by king's orders. The weak and others (exempted) shall depute their son or some other relative; and these (relatives) will not become liable for speaking without authority for another, as will be seen from the text of **Nârada.**[1] "He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings."

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[1] See Bâlambhaṭṭi P. 9 L. 4 &c.

[2] 'At their leisure and by means of conveyances' *Bâlambhaṭṭi.*

[3] ज्ञात्वाऽभियोगं—or it may also he rendered "having ascertained the importance of the complaint."

[4] I. 47–54.

To the inquiry, what should further be done when the defendant is brought by one of the (three) modes, *viz.* by the signet, the written order, or the messenger? the Author replies:—

Yâjnavalkya. Verse 6.

"Whatever is alleged by the plaintiff should be reduced to writing in the presence of the defendant, and marked with the year, the month, the fortnight, the day, the name, the caste and the like."

Mitâksharâ:—What is asked for is the **Artha,** (the relief sought the object to be accomplished; and a plaintiff (*Arthî*) is the one who sets it up. His opponent is **Pratyarthî** (the *defendant*). *Before* **(Agratah Tasya)** *him i. e.* in the presence of him. **Lékhyam** (*should be written*), should be reduced to writing. **Yathâ** (*whatever*) in which mode *i. e.* as alleged before at the time of making the first complaint; and not otherwise; for in that case the trial would be vitiated on the ground of departure (from the first complaint). For "one who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned; these are the five varieties of a faulty (*Hîna*) litigant."

"The allegations of the plaintiff having been once reduced to writing at the time of the first complaint, it might be said that writing it over again would be meaningless, so the Author says: **Samâ-mâsetyâdi,** (*year, month &c.*)—marked with the year, month, fortnight, date, day &c., as also bearing the names of the plaintiff and the defendant, and their castes such as Brâhmaṇa &c. By the word **Âdi** (*&c.*) are also

P. 5. L. 9.

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[1] Nârada II 33.

included the amount, the quantity, place, time, reason for forbearance[1] and the like (*Âdîni*). As has been said:—

P. 5. L. 12.

"That is termed a plaint or complaint, which is presented or made to the king, and which contains the *Artha* (the cause of action), which is in accordance with the law, which is complete and devoid of confusion, which contains the point at issue, which is couched in significant language, and which is consistent with the claim made out; (which is) intelligible, not inconsistant, certain, capable of proof, concise yet bringing out the whole cause of action, not impossible in regard to place or time; which contains the year, the season, the month, the fortnight, the day, the time, the country and the particular district, the village, the house or dwelling place, the point at issue, the designation, the caste, the personal description and age; which contains the measure and quantity of the point at issue, the names of the plaintiff himself and of the defendant, and (which is) marked with the names of ancestors of himself and of the defendant respectively, as also with the names of kings; (which contains) the cause of forbearance and the injury done to self (the plaintiff); in which are mentioned (the names of) the grantee and the grantor." *Bhâshâ* is the same as *Pratijñâ* or *Paksha.* It has no other meaning. The point to be noted is that at the time of the first complaint, only the cause of action is written, while in the presence of the defendant, the year, the month, and other particulars are written.

P. 5. L. 19.

Although the specification of the year is not necessary in all proceedings, still it is essential in trials concerning deposits or pledges, gifts, and sales, on account of the text:[2] "In the case of pledges, gifts, or sales, prior transactions have preponderance". And also in money disputes, such as in a case where a certain definite amount was borrowed by a certain person and was repaid in the same year, and again in another year the same amount was borrowed by the same person, but on demand he sets up repayment, the utility of the prescribed rule would be that payment and repayment in another year would be proved. The same (rule) would apply in the case of months. The provisions regarding (the specification of) country, place &c. however, apply only in transactions concerning immoveables, on account of the (following) text.[3] "In suits for immovable property, these ten (particulars) should be entered in the plaint *viz.* the province, the village or town, the particular site, the caste and names (of plaintiff and defendant), the names of neighbours, the measurement and

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[1] **क्षमालिंग**—Reason for forbearance—*i. e.* where the suit is apparently brought after the proper time, plaintiff has to explain the delay.

[2] Yajn. II. 23.

[3] of Kâtyâyana.

(descriptive) name of the field, the names of the father, the grandfather &c. as also a description of former kings". *Country e.g.* Central Province &c. *Place* or *village* such as Vârâṇasi &c. *Particular site—i.e.* house, field &c. of the same (town) properly identified and marked out by the specification of boundaries on the east, west &c. *Caste—i. e.* of plaintiff and defendant such as Brâhmaṇa &c., *Name—i. e.* Dêvadatta &c. *Neighbours i. e.* people residing in the adjoining land. *Measurement i. e.* of land such as a *nivartana* (20 rods). *Name of the field*—such as—a rice-field, or a rotation-crop field; black-field, white-field &c. And also names of the *father*, and *grandfather* of the plaintiff and the defendant; and also a *specification of names* of the three previous *kings*. The meaning intended is that the year, month &c., in each transaction should be written as much only as is necessary for that transaction.

*Page 6.

Such being the characteristics of a plaint, those (plaints) which are wanting in these essentials, but present an illusory appearance of a plaint, are evidently *vicious plaints*, and so vicious *plaints* have not been separately mentioned by the Lord of Yogis[1] (*Yôgís'wara*).

Others have mentioned for the sake of (greater) clearness: "The king should discard a vicious plaint, which, is impossible, does not disclose any injury (to plaintiff), is meaningless or causeless, cannot be proved, and which is contradictory." *Impossible,* as *e. g.* 'the defendant having taken my hare's horn, does not return it.' *Containing* or *disclosing no injury,* as *e. g.* ' the defendant moves about in his house in the light of the lamp of my house." *Meaningless, i. e.* devoid of a definite meaning *e. g.* ka, cha, ṭa, ta, pa, ja, ḍa, da, ba, &c. *Causeless,* as *e. g.* "this Devadatta reads in a charming voice near my house &c. *Incapable of proof,* as *e. g.* "I was ridiculed by Devadatta with the knitting of his brows"; this is incapable of proof on account of the imposibility of the means (to prove it). Having a transitory character, (there is) no possibility of (obtaining) a witness, much less a writing; nor, being trifling, would it (the fact) be amenable to an ordeal. *Contradictory,* as *e.g.* "I was abused by a dumb man" &c. Or such as are opposed to the (usage of the) town, nation &c.—

L. 8.

These are refutable by their very nature, and therefore are not specified. Even here " the *impossible &c.,*" are selected as illustrations for the sake of explanation;[2] that too does not put away a plaint which is a combination of several counts. " All the following plaints are declared as inadmissible, *viz.* that which is prohibited by the king which is hostile to the (interests of) citizens, or to the whole nation, or to the ministers; as also others which are hostile to the usages of the city, town or eminent citizens".

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[1] *i. e.* the sage *Yâjñavalkya.*

[2] व्युत्पत्तिः—Means a clearer explanation by drawing attention to the component parts of the sentence or words, as opposed to a rough, or general or popular conception. It is the same as तत्वतः ज्ञानं sometimes used elsewhere. (*cond. on page* 12.)

L. 13.

It has been said above that "a complaint which joins together several causes of action is not allowed"; but there would be no fault in such a case if it is expressly described as a plaint 'mixed up of many causes of action,' it being unobjectionable to allege that "my gold, clothes or silver has been taken away by this man." If it be said that a plaint becomes vicious on account of mixing together several counts in suits for 'the recovery of debts' &c. that too will not hold. For, the plaint is allowable which contains averments like the following, viz. 'He borrowed my rupees at interest', 'I delivered gold into his hand' and 'he deprives me of my field.' Only (in such cases) on account of a difference in the causes of action the trials are held separately in succession and not all together. As says **Kâtyâyana**: "A king, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law." Therefore the meaning of the rule is, that a plaint containing several counts will not be allowed to be established in all the counts at one and the same time. The word (*Arthî*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text:—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as of the party for whom he (the representative) pleads."[1] The success or defeat of the agent or representative is of the original principal only.

L. 21.

This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been revised and corrected by rubbing off and rewriting, it should be written down upon a paper, according to the following text of **Kâtyâyana** viz.

The meaning is that we know, without this text that plaints which are अप्रसिद्ध are पक्षाभासाs and must be rejected. Still the text is used to make the gist of the meaning of the word पक्ष clear. The व्युत्पत्ति meant here is the व्युत्पत्ति of the word पक्ष. तदपि, still these several texts (denoting पक्षाभासाs) do not include the case of अनेकपदसंकीर्ण. For it is not a case of पक्षाभास at all, as the only defect of that plea is that it cannot be gone into simultaneously.

[1] Nârada I. 22.

"The *Prâḍvivâka* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, as otherwise there is the fear of the proceeding never ending. Hence **Nârada** has said: "He (*i. e.* the Judge) may make corrections in the complainant's first complaint so long as the answer is not received; being stopped by the answer, the correction should cease." If the councillors cause an answer to be filed without revising the plaintiff's first complaint, then the councillors should be punished according to the punishment laid down in the text [1] (*Râgâllobhât &c.*) "out of passion avarice &c.", and the trial should be re-commenced by the king, commencing with the solemn affirmation.

It may be asked, what should be done after the plaintiff's revised complaint has been written down upon paper, so the Author says:—

Yâjñavalkya. Verse 7.

"The answer of the defendant, who has heard the plaint, should be taken down in writing, in the presence of the plaintiff or complainant."

The Answer.

Mitâksharâ:—*S'rutârtha*—*i. e.* The defendant—is one by whom the substance of the plaint has been *heard* (**S'ruto**). The answer. It is called the answer or replication because it appears after the plaintiff's complaint. **Lékhyam,** (*should be taken down in writing*), should be reduced to writing.

In the presence of (**Sannidhau**) of *the first informant,* (**Pûrvâvédakasya**), the plaintiff *i. e.* near him. An answer is that which is a refutation of the complaint of the plaintiff. As has been said:[2] "Men versed in law consider that an answer, which covers (the points raised in) the plaint, is concise, unambiguous, not inconsistent, and is easily intelligible without an explanation." *Which covers the points in the plaint* i. e. is capable of refuting it. *Concise* i. e. according to (the rules of) justice, not inconsistent with justice. *Unambiguous* i. e. free from doubt. *Not inconsistent i. e.* not contradicting statements made before and after. *Not intelligible without an explanation, i. e.* the meaning of which requires an explanation on account of the use of obscure words, or on account of the implication or express use of cases and compounds (which are) difficult to split up, or by reason of the use of expressions (current only) in the language of foreign countries. That which is not so tainted is called a proper answer.

* P. 7.

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[1] Yajnavalkya verse 4 above.

[2] Nârada.

P. 7. L. 4.

Fourfold answer.

That moreover is four-fold *viz.* admission, denial, confession and avoidance, and former judgment or *res judicata.* As says **Kâtyâyana.** "An answer is fourfold *viz.* by pleading the truth or the falsehood (of the plaint), or by setting up a special plea, or a decision in a former judical proceeding." Of these an example of the answer by admission may be found in the case where the defendant, being charged by the plaintiff that he owed a 100 rupees, replies by saying 'yes, I do owe (the amount)." As is said 'It (*i. e.* an answer) is called an admission, when the truth of the point at issue is admitted." An answer by denial is on the other hand made by saying. "I do not owe (the amount)." So also **Kâtyâyana:** "If the defendant give a denial to the claim made, that (answer) is known in law as a denial."

Four kinds of denial.

Such a denial moreover is of four kinds: as *e. g.* 'This is false;' 'I do not know at all;' 'I was not present there at the time (of the transaction):' and 'I was not born at the time;' thus fourfold is an answer by denial.'[1]

P. 7. L. 11.

The (answer by) confession and avoidance is, "true it is that I received, but I returned it, or obtained it as a gift." As says **Nârada,** "If a defendant, admitting plaintiff's written allegations sets up a plea, that is called a confession and avoidance." The (answer by a) former judgment or *res judicata* would be where the defendant would speak thus, 'I was sued by him on this cause of action, and in that suit he was defeated in a trial at law'. It has also been said by **Kâtyâyana:** "If a person, though defeated by customary procedure, again files a written complaint the answer to him would be, 'You were defeated formerly.' This is called the plea of former judgment."

P. 7. L. 17.

The characteristics of a proper answer having thus been established, the viciousness of those answers which are without the characteristics of a proper answer, but which bear the semblance of an answer, is self-evident. This has also been made clear in another Smriti. "That answer which is dubious, departs from the point at issue, is either too short or too long (as compared with the point at issue), covering only a portion of the claim, and is of the like sort cannot be called a proper answer. An answer which is irrelevant, incomplete, of concealed import, and is inconsistent, as also that which can be understood by an explanation (only), and which is unreasonable, is not an answer which will establish the plea set up." Of these: *a dubious answer is e. g.* where it is alleged that defendant borrowed 100 gold coins, the defendant answers "yes, I did borrow (something), but (I am) not certain whether 100 gold coins or 100

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[1] Nârada II 5.

Mâshâs.[1] *Departs from the point at issue,* as where in a suit for 100 gold coins, the defendant answers 'I owe 100 *paṇas.*' *Too small,* as where in a suit for 100 gold coins, the answer is 'I owe five.' *Too large,* as where in a suit for 100 gold coins, the defendant answers ' I owe two hundred'. *Covering only a part of the claim:* as where in a suit for (recovering) gold, clothes &c. the defendant answers—' only gold was received, nothing else.' *Irrelevant,* as in a suit for recovery of debts, defendant answers with reference to an entirely different matter; as *e. g.* in a suit for recovering 100 gold coins, defendant anwers—' I have been beaten by him.' *Incomplete i. e.* not covering the particulars of the country, place &c.; as *e. g.* where it is alleged. 'He has deprived me of my field to the east of Wârâṇasi in the Central Provinces, defendant answers. " Yes, I have deprived him of a field." *Of concealed import:* as *e. g.* in a suit for 100 gold coins, defendant retorts thus ' what ! Is it I alone who owe anything to him ?' Here by this dubious statement, it is implied that either the Chief Judge, or a councillor or the plaintiff is in the position of a debtor to some one and thus the statement has a concealed import. *Inconsistent i. e.* Contradictory having regard to the statements made before and after ; as in a suit instituted for 100 gold coins, defendant answers, 'yes I did receive the amount, but I do not owe it.' *Requiring explanation, i. e.* intelligible by the help of explanations [2]required by reason of the implication or express use of cases and compounds (which are) difficult to split up, or by reason[3] of the use of expressions current in the language of foreign countries. As for example, in a suit for 100 gold coins due under a paternal debt the defendent answers : 'As for the expression *grihîta-s'ata* (a hundred having been accepted), I do not know its connection with gold coins and my father.' Here, the real meaning (of the defendant's answer) is this: 'As for (the expression *grihîta-satasya pituḥ*) my father having accepted a hundred coins' I am not aware of his having received gold coins, *Unreasonable i. e.* opposed to reason. As in a suit alleging ' he borrowed 100 gold coins at interest, has paid the interest, but not the principal,' the answer is ' True, I have paid the interest, but did not receive the principal.'

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[1] A gold measure $\frac{1}{20}$th. part of a पण. "माषो विंशतितमो भागः पणस्य परिकीर्तितः".

[2] This has been given as an instance of the 'Implication or express use of cases and compounds (which are) difficult to split up (दुःश्लिष्टविभक्तिसमासाध्याहाराभिधान). Here, the answer of the defendant is capable of a twofold interpretation:—

(1) From the Defendant's side it may be said, ' even supposing the expression *grihîta-s'atasya pituḥ* means that my father had received a hundred coins, I do not see its connection with gold.'

(2) The plaintiff on the other hand, or even the court might read in the defendant's answer, 'an admission of the receipt of 100 gold coins by the father.'

And lastly, the fact that the answer is capable of an interpretation either way as stated above is in itself an evidence of (a दुःश्लिष्टसमास) 'a compound difficult to be split up.'

*Page 8. By using the word 'answer' in the singular number, a combination of answers is excluded. As says **Kâtyâyana** 'That which admits part of the claim as true, sets up a special plea[1] to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)." The same author thus explains the reason why such (a statement) is regarded as no answer: "In one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced at once in one suit." In a combination of the answer by denial and by special exception it is incumbent both on the plaintiff and the defendant to adduce evidence, as has been said: "In the case of a denial, the proof rests on the plaintiff, while in a special plea on the defendant." The simaltaneous proof by both in one transaction is contradictory. As for instance where the allegation is, "he has taken gold and 100 rupees", and the answer is "gold was not taken, 100 rupees were taken, but were returned." In a combination of the pleas of special exception and former judgment, the defendant alone has to adduce evidence. "In the combined plea of former judgment and special exception, the defendant must exhibit proof." As where the charge is that gold was borrowed and it is met by an answer that it was returned, and also that the plaintiff was defeated by a judicial trial with regard to silver. Here the former judgment should be proved either by (producing) the decree itself, or by the evidence of those who gave (or were present at) the former judgment, while a plea of special exception should be proved by witnesses, documents &c. Thus there is an opposition between the pleas of *res judicata* and special exception.

The same would be the view in the case of a combination of three pleas in an answer. As *e. g.* where it is alleged 'he (the defendent) borrowed a hundred gold coin, a hundred rupees, and also clothes, the defendant answers "True, gold was borrowed, but it was returned; the hundred rupees were not taken at all; and as regards clothes, he has already been defeated in a former judgment." So also in the case of a combination of four pleas.

P. 8 L. 12 These mixed pleas constitute vicious answers when set up simultaneously, each particular plea not being likely to be established without its particular proof, but when taken separately they are good answers. The order is to be determined according to the will of the plaintiff, the defendant, and the councillors. Where, however, there is a combination of two, that plea, which contains the most important point should be taken up for proof first, and the suit should proceed; and the minor plea should be taken up afterwards and the trial determined. Where there is a combination of (the plea of) admision and another plea (in answer), the suit should be tried by taking up the other plea (for proof); it being impossible to adduce evidence for both the pleas simultaneously. **Hârîta** after observing: 'If a denial and a special exception should occur together, and if the plea of admission be made with any other, which of these should be accepted as an answer?" has remarked " In such a case, that which contains the most important point or which is conducive of proof, is to be considered as an unmixed answer; any other answer becomes otherwise"; *i. e.* it becomes a mixed answer.

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[1] This would correspond to the plea, in English law, of "*Confession and avoidance.*"

The order in which such mixed pleas are taken up for determination depends on choice. Of these, the plea containing the *important point* occurs, as *e. g.* where in a suit it is alleged that "the defendant borrowed gold, one hundred rupees and also clothes" and the answer is "True the gold was taken, the one hundred rupees were not taken, and as for the clothes, they were taken, but were returned." Here the answer by denial being the important plea the trial should proceed after taking plaintiff's evidence. Then the trial should proceed with reference to the clothes. The same order should be followed in the combinations of denial and previous judgment, or of special plea and previous judgment. Moreover, in the same suit, where the answer is " True, I received the gold and the hundred rupees, (but) I will repay (them); the clothes, however, were not received, or having been received, were given back; or that he (the defendant) was defeated formerly in regard to the clothes"; in such a case although the admission is the most important point, there being an absence of evidence for it, the trial should proceed after taking evidence on the plea of denial &c. Where however, the denial and special plea cover the whole point, as *e. g.* where the plaintiff identifying his cow by the horns, says " This is my cow, (it) was lost at a particular time, and was seen today in this man's house"; while the defendant says "This is false, the cow has been in my house even before the time mentioned by him (plaintiff), or it was born in my house." It cannot be said that this is not an answer, as it is competent to meet the point in dispute, nor can it be a simple denial, as a special plea has been introduced. Nor, there being no admission of a portion of the plaintiff's case, is it a special plea. Therefore this is an answer by denial coupled with a special exception. Here defendant has to adduce evidence, on account of the text " the burden is on the defendant, in (the case of) a special exception."

It may be asked, under the text " in a denial, the evidence should be led by the plaintiff" why does not the burden (in the above case) lie upon the plaintiff? The answer is that the text applies to a pure denial. Then it is asked, why should not the text " In a

P. 8 L. 31

special exception, the burden is on the defendant" be made likewise applicable only to a simple plea of special exception?" the answer is, "no, this cannot be. Every plea of special exception necessarily involves a denial; and therefore a special exception pure and simple can never occur."

* P. 9.

As the well known plea of special exception contains an admission of a portion of the plaintiff's case there is a denial, of the rest. As *e. g.* "True, I did receive a hundred rupees, but I do not owe (the amount) now, as I have repaid it." In this example the particular point to be noted is, that there is no admission of a portion of the plaintiff's case. This moreover has been clearly laid down by **Hârîta**:—"Of the two answers of denial and special exception, the special exception should be accepted (as an answer)."

Where the pleas of denial and previous judgment cover the (whole) point at issue—as *e. g.* in the allegation "He owes a hundred rupees to me" the answer is: "This, is false; he (the plaintiff) has been defeated formerly on this point"; there also the burden of proof is on the defendant, on account of the text "when *res judicata* and special exception are set up as a combined plea the defendant should exhibit proof." Because, the plea of a former judgment pure and simple can never occur, and (therefore) it might be said that the plea is no answer. Likewise, the plea of admission is a good answer (precisely) because, it meets the point at issue by admitting as established the claim which in the plaint was stated as the matter to be established." Where, however, there is a combination of a special plea and previous judgment, as *e. g.* when charged with having received a hundred, the defendant answers "True, it was received but it was returned, and, moreover, he (the plaintiff) has been defeated before on this very cause of action". In such a case, proof will be exhibited (in the order determined) according to the defendant's choise. The result is, that a double proof in one suit by the plaintiff and the defendant should not be allowed.

Yâjñavalkya Verse 7 (2)

After the written answer is thus filed, the establishment of the point at issue being dependant on the means of proof, it may be asked who should exhibit the proof, so the *Author* says:—

Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute (or alleged) is (proposed) to be established.

Mitâksharâ:—**Tataḥ** (*Next*) after the answer. **Arthî**, (the *Plaintiff*), one who has to gain a point. **Sadyaḥ** (*immediately*), immediately after. **Lekhayet** (*should have written down*). What has been sworn to in the complaint and is to be established is the **Pratijñâtârtha**,—the point at issue. Of that the **Sâdhana** (means of proof) *i. e.* that by which the matter is to be established *i. e.* the measure (of proof). Here, by saying (the evidence) 'should have immediately written down', it is implied that some delay is allowed in stating the answer. That, moreover, will be discussed in detail later on.

P. 9 L. 15

By saying that 'the plantiff should have written down evidence for proving the point at issue', it is meant that the party who has to gain the point should have written down the means of proof of the point at issue. Therefore, in an answer where a previous judgment is pleaded, the previous judgement itself being required to be proved, the defendant himself is regarded as the plaintiff, and so he himself should have his means of proof written down. So also in an answer containing a special plea, the special plea itself being required to be proved, he who sets up the special plea himself comes to be (in the position of) the plaintiff, so he should have the proof written. In a denial, however, the original complainant is himself the plaintiff, and he should exhibit the means of his proof.

P. 9 L. 19

By saying "Next the plaintiff should have written down &c.", it is intended to be laid down that the plaintiff alone should cause the proof written, and none else. And, hence also, in the case of an answer by admission there being no point at issue, neither the complainant nor the defendant being in the position of a plaintiff, there is no indication of the means of proof, and thus, it follows, that the trial comes to an end at that very stage. This very rule has been clearly stated by **Hârîta**—"In an answer containing the combined pleas of former judgment and special exception, the defendant should exhibit proof; while in the plea of denial, the original plaintiff; (but) in the plea by admission, the proof is not necessary at all."

Yâjñavalkya Verse 8 (1).

If it (the proof) succeed, he obtains success; if otherwise, the reverse *i. e.* if it do not permit, he fails.

What next? So the author says.

Mitâksharâ: Tasya (*of that*) *i. e.* of the means of proof having the characteristics, inferrable from the several texts to be mentioned further on, about the written documents, witnesses, &c., presently to be described. **Siddhau** (*in the case of success*) if accomplished **(Siddhiṃ)**—*success* in the form of accomplishing the point at issue. **Prâpnoti** (*obtains*). **Ato** (*other*) than this mode. **Anyathâ** (*otherwiss*), the non-establishment of the (means of) proof in any other manner brings on (**Âpnoti**) *the reverse*, **(Viparîtaṃ)** *i. e.* the non-accomplishment of the point at issue which is indicative of a defeat. This is the construction.

Yâjñavalkya Verse 8 (2).

This legal procedure is declared to be of fourfold character in litigation.

Mitâksharâ: *The legal procedure* **(Vyawahâra.)** referred to

The author having thus described the nature of a judicial trial now concludes,

in the text "A king should hold trials &c."[1] has thus been (**upadars'itaḥ**) described to be of fourfold character *i. e.* by imagining it to consist of four parts in litigation; *i. e.* in the chapters on payment of debts &c. as consisting of four parts and being of four kinds. Of these the first part is called the part relating to the plaint and begins with the text. "In the presence of the defendant (the plaint) should be written &c.".[2] The second part is the part relating to the answer and is introduced by the text "the answer of one (*i. e.* of the defendant) who has heard the plaint should be taken down in writing."[3] The third part relates to evidence and proof and begins with the text. "Next the plaintiff should cause to be written &c.[4] The fourth part contains the decision regarding the proof of the point at issue and is in the text "If it (the proof) succeeds, he obtains success[5]".

As is said "When disputes regarding their interests arise between men, their settlement according to rules laid down in texts is called a *Vyavahâra* or a judicial trial. The four divisions of it *viz.* the plaint, the answer, the proof, and the decision are laid down in their proper order; hence it is called four-fold. In an answer by admission, however, the proof is not exhibited, and thus the point at issue is not (necessary to be) established (at all), and so it has not the part which contains the means of proof. So it has two parts only. After the answer is recorded, the decision[6] of the councillors (on the onus) by ascertaining on whom, between the plaintiff and defendant, the proof should lie has not been mentioned by the king of Yogis (Yâjñavalkya) as a (distinct) part (stage) in a judicial proceeding, and as it (the decision as to the onus) has no reference to the parties, it has not been mentioned here as a (distinct) part in a judicial proceeding. This is as it should be.

End of the Chapter on General Rules of procedure.

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[1] Yâjna. II. 1.

[2] Yâjna. II. 6. see p. 9 l. 19 above.

[3] Yâjna. II. see p. 13 l. 17 above.

[4] Yâjna. II. 7. p. 18 l. 34 above.

[5] Yâjna. II. 8. see p. 19 l. 29 above.

[6] परामर्श=व्याप्यस्य पक्षवृत्तित्वधीः परामर्श उच्यते. *e. g.* वन्हिव्याप्यधूमस्य वन्हिव्याप्यधूम पर्वतवृत्तित्वं धीः परामर्शः=धूमो वन्हिव्याप्यः पर्वतवृत्तिश्च इति ज्ञानं परामर्शः. Here the परामर्श would be the mental process deciding the onus by sifting the statements in the pleadings with the view of discovering

(1) how far these statements are relevant to the issue पक्षवृत्तित्व.
(2) " " " have a reference to the relief claimed साध्य-व्याप्यत्व.

The opponent says that परामर्श characterized as above has been recognised as a distinct stage in reasoning, how is it that Yâjñyavalkya does not make it a distinct *Pâda* (section or chapter). The author replies in the text उत्तराभिधानानंतरं &c.

Chapter II.

Special Rules of Procedure.

Having so far laid down the rules of procedure applicable to all kinds of suits, and wishing to point out some peculiarities (of procedure) in some special suits, the Author proceeds.

Yâjñavalkya Verse 9 (1)

Until the complaint is disposed of, no counterclaim should be allowed against him (*i. e.* the complainant).

Mitâksharâ:—(That) With reference to which an accusation is made is an **Abhiyoga**—(a complaint regarding) an offence. *Until the complaint is disposed of* (**Anistirya**), *i. e.* removed. **Enam** (*him*) *i. e.* the complainant should not be allowed to be charged with an offence. **Na pratyabhiyojayet** (*No counterclaim should be allowed*).

Counterclaim.

Although a 'special plea' has the appearance of a counterclaim, still it does not come under the present exception inasmuch as it is intended for removing a charge against oneself. Hence, this prohibition is against that form of counter-charge which is not intended as an answer to a charge against oneself. This *i. e.* the following has been laid down as having reference to the Defendant.

The Author now states the rule as regards the plaintiff.

Yâjñavalkya Verse 9 (2)

Nor should any other person be allowed to file a complaint against one who is already under a charge ; nor what has already been alleged should be allowed to be changed.

Mitâksharâ:—Abhiyuktam cha Nânyeneti (*nor should any other person be allowed to file a complaint against one who is already under a charge* &c.). As against one who has (already) been charged and who has not got over the charge another complaint should not be allowed to proceed; moreover, **Uktam** (*alleged*) what was deposed at the time of the first complaint, that **viprakritim** (*change*) (if) containing a contradiction. **Na nayet** (*should not lead*) should not be allowed. The purport is this. Whichever fact has been deposed to in whatever form at the time of the first complaint, that fact should be taken down in the same manner at the time of the formal complaint and not otherwise.

It may be asked: It has already been laid down in the text.[1] *viz.* "Whatever is alleged by the plaintiff should be reduced to writing in the presence of the defendant." Why then has it again been repeated in the text[2] 'nor should what has already been alleged be allowed to be changed". The answer is: By the text "whatever is alleged by the plaintiff" is meant that those facts which have been deposed to at the time of the first complaint, (the same) should be caused to be written down in the same manner at the time of the *Bhâshâ* or plaint ; as it has been said that a change in the subject-matter ought not to be allowed even though it be made in the same suit; as *e. g.* having alleged at the time of the first complaint that 'he (the defendant) borrowed a hundred *rupees* at interest,' it should not be stated at the time of the formal plaint or *Bhâshâ* in the presence of the defendant that 'a hundred *clothes* were borrowed at interest.' In that case, even if there be no change in the suit itself, there being a change in the subject-matter, he (the plaintiff) would be amenable to a penalty as *a hîna wâdi*—one guilty of prevarication.

By the text "nor what has been alleged should be allowed to be changed" a prohibition against a change into another suit is laid down even in cases where the subject-matter remains the same. As *e. g.* having said at the time of the first complaint that 'having taken a hundred rupees at interest, he (the defendant) does not repay (the amount), he says at the time of the second or formal complaint (Bhâshâ) that 'he deprived me of a hundred rupees by force.'

There,[3] a change to another subject-matter is prohibited, while here[4] a change (in the nature of the suit) is prohibited, and thus there is no fault of repetition. **Nârada**[5] has made this very thing clear: "He who abandons his first allegations, and resorts to a new one, should be regarded as a prevaricator on account of the change in the suit[6]."

A prevaricating litigant becomes amenable to punishment but he does not lose his suit. Thus this direction given in the present verse, *viz.* "until the complaint is disposed of &c.," is intended to avoid mistakes on the part of the plaintiff and

* PAGE 11.

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[1] Of Yâjñavalkya V. 6 (See page 9, l. 19 above).

[2] Yâjñavalkya Verse 9 (2).

[3] *i. e.* in the text. प्रत्यार्थिऽनोग्रतो.

[4] In the present text.

[5] II. 24.

[6] पद् (*Pada*) as used here is intended to indicate a suit; while वस्तु (*Vastu*) indicates the subject-matter of the suit or the point involved.

the defendant, and has no reference to the proving or otherwise of the point in dispute. Hence the author says further on[1]: " After discarding all circumvention, the king should decide disputes according to the actual facts."

This (limitation of the rule), however, should be observed in suits relating to property[2] or title. In disputes arising out of acts resulting from violence plaintiff loses (even) his suit if he makes a false statement. As says **Nârada** " A verbal trickery does not vitiate all actions relating to property; for in suits relating to cattle[3], women, land, immoveables and the recovery of debts, the claim is not dismissed even though the claimant is liable to a penalty." This is explained (thus).[4] *In all suits relating to property*—not in those originating in anger or passion *a verbal trickery*—even if it be through mistake, *does not annul*-does not get defeated *i. e.* he does not lose his case that is pending An example here is, '*Cattle, women &c.*' *i. e.* as in suits relating to cattle, women, recovery of debts, a plaintiff does not lose his case, though he is (otherwise) liable to a penalty, so (is the case) in all suits relating to property.

From the specification of 'suits relating to property,' it appears that in suits arising out of acts of violence, the party loses also the claim that is pending, in the case of an erroneous statement. As *e. g.* having stated at the first complaint that " I was struck on the head by him with his fist," if he says at the time of the formal complaint or *Bhâshâ* that " I was struck (either) on the head or on the foot," he not only is amenable to punishment, but his complaint is also dismissed.

' The Author mentions an exception to the rule—" until the complaint is disposed of, no counterclaim should be allowed against him"

Yâjñavalkya Verse 10. (1)

A countercharge may be allowed in cases of torts and felonious crimes.

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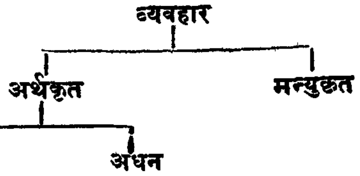
[1] Yâjñ. 11. 19.

[2] Note the following divisions of व्यवहार.



[3] पशुस्त्री is a better reading; परस्त्री another woman.

[4] Text of Nârada.

Mitâksharâ:—**Kalahe**: (*in torts*) in cases of defamation and assault, **Sâhaseshu** (*in felonious crimes*) in cases of destruction of life by means of poison, weapons &c. (In such cases) when there is a countercharge it should be allowed against the complainant even while his own complaint is undisposed of.

It may be urged that even in such a case, the countercharge would not be a proper answer inasmuch as it does not meet the case of the plaintiff, and thus (in fact) there being another *pratijñâ* or complaint it is equally impossible to go into a simultaneous proof (of both the charges). To this the answer is; true. But here a countercharge is not allowed with a view to a simultaneous proof, but for an abatement of the punishment or for avoiding or preventing an excess of it; for, where the complaint is 'I was beaten or abused by him,' and the countercharge is 'I was first beaten or abused by him,' there would be a light punishment. As says **Nârada**[1]: "He who is the first to inflict an injury is assuredly guilty; he who retaliates is likewise guilty; but for the first, the punishment is heavier." Where, however, the assault etc. is commenced simultaneously from both, an enhanced punishment is avoided. "When both parties simultaneously commence abusing or beating each other, and a difference (in degree) cannot be found, the punishment for both would be the same[2]." Thus, even if proof of simultaneousness is impossible, still in cases of abuse &c. a counter-charge has a value; in suits for the recovery of debts &c., however, it is simply useless.

After laying down the rules for the plaintiff and the defendant, the Author mentions the functions of the Presiding Officer (of the Court) and his Councillors.

* PAGE 12. Yâjñavalkya Verse 10 (2).

From both a securety should be taken, who would be competent to satisfy the object of the judgment.

Mitâksharâ:—**Ubhayoḥ** (*from both*), from the plaintiff and the defendant. (That which) in all suits (is) the object of the judgment or decree is **Kâryanirṇaya** (*the object of the judgment*). The word *Kârya* has been placed first under the rule '*Ahitâgnyâdishu*.' The object of the judgment, moreover, is the payment of the amount decreed or the payment of the fine. *Competent* (**Samarthaḥ**) for this. **Pratibhûḥ** (*Surety*); he who becomes

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1 Ch. XV. 1.

2 C/o Nârada Ch. XV. 8.

like him, *i. e.* becomes like him in that cause is a *Pratibhû*; (such a one) should be taken by the Officer presiding the Court consisting of councillors.

If he (a securety) is not produced men should be commissioned to watch the plaintiff and the defendants and the daily wages of these (guards) should be ordered to be paid by those (plaintiff and defendant). As says **Kâtyayana** " If, however, the plaintiff has no securety competent for the cause, he should be (kept) under a watch; and (he) should pay the wages to the servant at the end of the day."

It has been said that a surety should be taken from the plaintiff and the defendant, who would be able to satisfy the object of the judgment ; it may be asked what is that object of the judgment ? Anticipating this the author says.

Yâjñavalkya Verse 11.

When, upon a denial (by the defendant), a claim is proved, he (the defendant) should pay the amount claimed (to the plaintiff) and also an equal amount to the king. One setting up a false claim should pay double the amount claimed.

Mitâksharâ:—If upon a denial by the defendant of the claim alleged by the plaintiff the claim is *proved* by the plaintiff (**Bhâvitaḥ**) by means of witnesses &c. and thus brought home to the defendant then the defendant should *give the amount* (**Dadyâddhanam**) in dispute to the plaintiff and also *an equal amount to the king* (**Râjñe cha Tatsamam**) as a fine for '*the denial.*' If, however, the plaintiff is unable to establish (his case) then he himself becomes a *false claimant* (**Mithyâbhiyogi**), and as such should *give to the king* (**Dadyâdrajñé**) *double* (**Dwiguṇam**) the amount of the plaint (**Abhiyogât**) *i. e.* the amount claimed in the plaint.

This same rule should be applied to the plea of '*res judicata*' and 'confession and avoidance.' There too when the plaintiff is shown by the defendant to have set up a (false) denial, he should give to the king a fine equal to the amount in dispute. If, however, the defendant is unable to establish either of the pleas of *res judicata* or 'special plea,' then he himself should give double the amount to the king for having set up a false plea, while to the plaintiff the amount claimed or in dispute. In an answer of admission, however, there is no fine.

This, however, has a reference only to the suits for recovering debts. It is not of universal application, inasmuch as special fines have been mentioned in (all) other (kinds of) suits, in their respective places, and also as it cannot possibly occur in suits where the subject-matter is other than money.

The rule that 'a debtor should be made to pay by the king[1] &c.,' has a reference to or applies in suits relating to the recovery of debts, and we will particularize it there.[2]

The same rule should even be used as having a reference to all (kinds of) suits. How ? If upon the defendant's setting up a denial of the claim it is proved by means of witnesses &c. by the plaintiff as against the defendant then *equal to it* **(Tatsamam)** *i. e.* to the very amount specified respectively in each (kind of) suit. The word *cha* is used to restrict the [3] extent (of the fine). 'The amount should be paid to the king' is the (construction based on) repetition.

If the complainant is not able to bear out this complaint, then the rule laid down is that a double amount of that mentioned in each suit should respectively be paid by him as a fine for (being) a false complainant. Here also in the plea of *res judicata* and of a 'special plea' the rule should be applied similarly as before.

By the text 'Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established', it has been shown that (some) time should be allowed at the stage of filing the answer ; the Author mentions an exception to this.

Yâjñavalkya Verse 12.

In charges regarding felonies, theft, assault, and cow-murder, and in complaints about risk to life and property, and in complaints against defamatory imputations, as also in cases concerning women, the parties must even immediately be asked to plead. In other suits time has been allowed under the discretion (of the court).

Mitâksharâ:—Sâhasam. (*a felonious crime*) the killing of animals and doing like other acts by means of poison, weapons, **Steyam** (*theft*) stealing a way. **Pârushyam** (*assault*) verbal abuse and bodily assault to be defined further on. **Gauḥ** (*cow*) a milch-cow. **Abhis'âpaḥ** (*defamatory imputation*) imputations about the commission of a sin. **Atyayaḥ** (*risk of life and property*) danger to life and wealth; regarding it. The singular is used as the *Dwandwa* (द्वंद्व) compound is indicative as if it were a single object.[1]

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[1] Yâjñ. II. 42.

[2] See Verse 42 further on.

√ Words have the force of प्रवृत्ति or व्यावृत्ति *i. e.* of having a wider surface covered by the connotations than is indicated by the denotations. In this connection the distinction between नियम and परिसंख्या may be compared. In 'पञ्चपञ्च नखा भक्ष्याः' all animals other than the पंचनख are excluded (व्यावृत्ति;) while in 'समे देशे यजेत' it is not so much the *exclusion* (व्यावृत्ति) of विषमदेश, although that may be the ultimate result, as the selection of a समदेश (प्रवृत्ति) that is aimed at. So Vijñaneśwara says that by the use of the word *cha*, Yâjñavalkya means to lay down that an amount equal in amount to that in dispute, and not more or less, should be levied as the king's fine.

Striyâm: (*concerning women*) high-born women, as well as slave girls. In the case of high-born women, in disputes regarding good conduct or character, in the case of slave-girls, in disputes regarding the right of ownership. **Vivâdayet** (*be asked to plead*) be made to file an answer. **Sadya eva** (*even immediately*) no time should be allowed to intervene. **Anyatra** *in other suits*. **Kâlaḥ** (*time*) time for filing an answer. **Ichchhayâ** (*under the discretion*) *i.e.* of the plaintiff, defendant, councillors and the officer presiding or the chief officers. **Smritaḥ** (*allowed*) laid down.

Yâjñavalkya Verses 13, 14 and 15.

He who shifts from place to place, licks his lips, whose forehead perspires, as also he whose countenance changes colour, who has a stammering and incoherent speech and talks inconsistently and too much, who does not respond to the speech or gaze of others and who moreover bites his lips, who exhibits an inborn deformity in mind, speech, body and action, is known as defective and unfit to be a complainant or a witness.

* PAGE 13.

Mitâksharâ:—Mano-wâkkâya Karmabhiryo swabhâvâdeva (*who in mind, speech, body and action exhibits an inborn*) not on account of fear &c. **Vikritim** (*deformity*) change (for the worse). **Yâti**[2] *goes*. Such a one *is known as unfit to be a complainant or a witness*. (**Abhiyoge Sakshye wâ dushtaḥ parikirtiatḥ.**) The author points out the deformity in detail. **Desâddesântaram Yâti** (*shifts from place to place*) has no permanent residence anywhere. **Srikkiṇî** (*lips*) the corners or the edge of the lips. **Pariledhi** (*licks*) touches by the end of the tongue or rubs,–an instance of a *deformity in action*.

Characteristics of an unfit person.

Asya lalâṭam swidyate (*whose forehead perspires*) becomes smeared with drops of perspiration. **Mukham cha Vaiwarṇyam** (*countenance also has a changed colour*) a changed colour *i. e.* palour or shadiness. **Eti** assumes[3] are instances of *bodily deformity*. **Paris'ushyatskhalad-**

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[1] 'सर्वोऽपि द्वंद्वो विभाषैकवद्भवति' "All *Dwandwa* compounds are used optionally as indicative of a single object.—परिभाषेन्दुशेखरः

[2] Appears to be a reading that may have been before Yijñnes'wara. The reading in the original text of Yâjñavalkya is गच्छेत्.

[3] Lit. goes or reaches.

wâkya *who has a stammering and incoherent speech.* **S'ushyat** (*stammering*) with a stutter. **Skhalat** *incoherent.* He whose speech is of such a sort. A man of this description. **Viruddham** (*inconsistently*) the last contradicting the first. **Bahu Bhâshate** *talks much.*—is an instance of *deformity in speech* To the *words* **(Wâcham)** of another, he does not attend by giving a reply; nor does he attend to the gaze **(Chakshuḥ)** of another by a responsive look—a sign of *mental deformity.* **Tathâ Oshthau Nirbhujâti** (*moreover bites his lips*) *i. e.* twits—is also an instance of a *bodily deformity.*

This, however, has been mentioned to indicate a probable existence of a defect; not as a positive mark of the (existence) defects as it is difficult to appreciate the distinction between a natural defect and a defect caused by a special circumstance. And even if perhaps a distinction is drawn by any skilful person, still that (by itself) will not be a sufficient cause for a dismissal of (the suit). No one would set about actually performing the exequial rites by merely observing (the) signs (of impending death) in a dying man. Similarly, even if it be known from the signs that the party would be defeated, still, that (by itself) is not sufficient to bring about (an actual) defeat.

Yâjñavalkya Verse 16.

He who tries to substantiate a doubtful claim independently (of the means of proof), he who absconds, as also he who when summoned into the court does not say anything, is considered to be a false litigant and punishable as such.

Mitâksharâ:—Moreover, **Sandigdhamartham** (*a doubtful claim*) even when not admitted by the (defendant) debtor. **Yaḥ. Swatantraḥ.** *who tries to substantiate independently* of the means of proof *i. e.* by confinement, arrest &c. **Sa hîno daṇḍyas'cha** *he is considered to be a false litigant and punishable as such.* Likewise he who after himself having admitted a claim, or after a claim was established by the means of proof, *absconds* **(Nishpatet)** when asked (to pay). He, moreover, against whom a claim has been filed and who even when *summoned* **(âhûto)** by the king into the court, *does not say anything.* He also is considered a faulty litigant and punishable as such. This is the construction.

As this verse has been introduced by the text " is known as defective and unfit to be a complainant or a witness"[1] it might be supposed that this verse is intended simply for detecting a faulty litigant (without more), so the word *daṇḍyà* (punishable) has been used. Moreover, from the text "even if one makes himself amenable to punishment as guilty, he is not liable to have his suit dismissed" it has been shown that a party does not lose his claim. Intending to avoid such a conclusion here, the author has used the word *hîna* (*faulty*).

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[1] Last line of Verse 15 above.

Where, moreover, two men simultaneously go to the officer of justice, each as plaintiff e. g. where, a certain person having obtained land by gift, after enjoying possession of it for some period, went out on business into another country along with his family; and a certain other person also obtained the same land by a gift and after enjoying possession for some time, went into another country. Afterwards both returned together and there was a quarrel saying "this is my land, this is my land," and when both go simultaneously to the officer of justice, the question would be on whom should the burden of proof lie ? Anticipating this, the Author says:—

Yâjñavalkya Verse 17.

When there are witnesses for both sides, those for him who claims priority should be taken first; and if the first claim be invalidated, then those (*i. e.* the witnesses) of the next claimant should be examined.

Mitâksharâ:—Ubhayataḥ (*for both sides*) for both the litigants. Witnesses (**Sâkshishu**) *i. e.* when they are available. *The witnesses for him who claims priority* (**Sakshiṇaḥ pûrvavâdinaḥ**) (*should be examined*). A **Pûrvawâdî** (*person claiming priority*) is he who says that he got (it) by a gift and had enjoyed at a prior date; and not one who first makes a complaint. The witnesses for such a one should be examined.

When, however, another person says:—"True it is that this man first got it by gift and also was in possession, but the king gave this very field to me after purchasing from this very man or that this man gave it to me after having obtained by gift"—then, the case of the first claimant becomes invalidated as it is required to be proved and when the case of the first claimant is invalidated, the witnesses should be examined of him who says that he got a gift at a later date and was in possession

* PAGE 14. (since). This explanation[1] alone is proper. It would not be proper to put the following interpretation, *viz.* if the answer is by denial, the witnesses of him who claims priority are examined; while in the answers of *res judicata* and '*special plea*' if the case of the first claimant be invalidated then would come in the witnesses of the next claimant. The same import having been laid down in the text–'Next, the plaintiff should immediately have written &c.[2]" there would be the fault of repetition.

The first (mode of) explanation has also been brought out clearly by **Nârada** who after observing—"In the case of a denial, the proof rests on

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1. *i. e.* taking both as plaintiffs and not one as अर्थी and another as प्रत्यर्थी.
2. Yajnavalkya 7. (2) page 18. above

the plaintiff, while in a 'special plea' on the defendant. For establishing a *former judgment* the (production of the) decree would constitute (sufficient) proof." says:—[1]"When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim shall be heard."

This rule has been specially mentioned as it differs from the rules of procedure for suits in general.

Yâjñavalkya Verse 18.

If a dispute is accompained by a wager, then the defeated party should be made to pay a fine and the amount of the wager (to the king) and also the amount in dispute to the judgment-creditor.

Mitâksharâ: Moreover, If a *dispute* (**Vivâdo**) *i.e.* a judicial proceeding, be (**Sapaṇaḥ**) accompained by a wager,—staking is (the same thing as) wager and that which contains this is one accompained by a wager,—then *there* (**tatra**) *i. e.* in that proceeding which contains a wager, *the defeated* party (**Hînam**) who has been described above. The king should make him pay a fine (**daṇdam**), as also the amount of the wager laid by him; and to the (judgment) creditor the amount in dispute (**dandam**). Similarly where one being under the influence of anger, makes a stipulation thus:—"If I am defeated, I shall pay 100 *paṇas*, and the other (side) does not make any stipulation, then also a suit is set in motion; and when the suit is commenced, if the person making the stipulation loses, then he himself should be made to pay a fine as well as the sum stipulated. The other (party) however, if defeated, should be made to pay the fine and not the stipulation as the text particularises it (*i. e.* stipulation) as for one's own.

Where, however, one stipulates 100 and the other 50 only, there also in case of a defeat each should be made to pay respectively the amount stipulated by him alone. By the text "if the suit is accompanied by a wager" the Author has indicated (the existence of) a suit without a wager.

Yâjñavalkya Verse 19.

After discarding all circumvention, the king should decide disputes according to the actual facts; for even a real claim (based on actual facts) is likely to be lost in a judicial proceeding if not properly presented.

Mitâksharâ:—Moreover **Chhalam** (*circumvention*). what has been wrongly said. **Nirasya** (*after discarding*) after throwing off. **Bhûtena**

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[1] Ch. II. 163.

(*according to the actual facts*) in pursuance of the real state of facts. A king should bring disputes to an end **(Vyawâhâraṇ nayed antam nṛipaḥ).** Since, *even a real claim* **(Bhûtamapi)** *i. e.* a true case *if not properly presented* **(Anupannyastam)** *i. e.* if not properly pleaded, *is lost* **(hiyatè)** *i. e.* suffers a defeat *in a judicial proceeding* **(Vyawahâratah)** at the trial on account of witnesses &c.

Therefore the actual facts should be found out. The presiding officer of a Court along with councillors, by gentle persuasion and such other means, should try in such a way that the plaintiff and the defendant would speak the truth only ; (for) in that case the decision would be given even regardlessly of witnesses &c.

If, however, it is absolutely impossible to find out the real facts (then) in that case, the second course is that the decision should be given by examining witnesses &c. As has been said[1] :—"It (*i. e.* a legal proceeding) is said to have two courses, as it is capable of being in pursuance of facts or founded on error. A fact is that which truly embodies the actual events. Error is what has been erroneously deposed to."

There, a decision given in pursuance of actual facts is the principal course, that founded upon error is only secondary. In a decision based on (the evidence of) witnesses and documents, the truth may sometimes be followed, sometimes not, as it is possible for witnesses &c. to deviate (from the truth.)

* PAGE 15.

The Author mentions an illustration of the text " even a real claim is lost in a judicial proceeding if not properly presented"

Yâjñavalkya Verse 20.

Where the defendant sets up a denial and it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in one particular, he should be compelled by the king to pay the entire claim. He (the plaintiff) should not, however, be allowed to recover (from the defendant) what had not been alleged in the plaint.

Mitâksharâ:—Naikam (*severally*) many particulars *e. g.* gold, silver, clothes &c. **Likhitam** *written* allegation made by the plaintiff. If the defendant *denies* **(Ninhute)** *i. e.* conceals the whole claim, then, if the *claim is proved* **(Bhavitaḥ)** *i. e.* the defendant is made to admit, the entire claim with regard to silver &c. (also) as alleged in the plaint should be caused to be paid to the plaintiff *by the king* **(nṛipea ṇ).**

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[1] Nârada I. 29.

Na grāhyastuaniveditaṭh (*should not, however, be allowed to recover what has not been alleged.*) What had not been alleged at the time of the first complaint, but afterwards is being informed by the plaintiff saying that it was formerly forgotten, *he should not be allowed to recover,* (**nagrâhyaḥ**) *i. e.* to be (allowed to be) paid, by the king.

It must not be supposed, however, that this rule is based on special texts only[1]; the hollowness of the defendant's denial as to one particular having been established, it leads to the possibility of (establishing) its falsity as to other particulars also. Likewise, the truth of the plaintiff's allegations having been established in one particular, it raises the probability of its being true in other particulars also. Thus, from this very text of the **Lord of Yogis**[2] supported as it is by the rules of Logic which is only an *alias* for 'the rules of probative reasoning,' the resulting rule (that comes to be established) is that the king should cause the entire claim to be paid.

And when a suit is being decided in pursuance of the rules of logic, no fault would attach to the judges deciding the suit, even if the real facts stood otherwise.[3] As also (says) **Gautama.** After stating—'Rules of logic are a means for arriving at a judicial decision. For getting at a decision with (the help of) it (logic), parties should be placed in their proper positions respectively',[4] he concludes thus: 'therefore the king and the preceptor are blameless.'[5]

It appears, moreover, from the text 'a party confronted in one particular should be made to pay the whole (claim) by the king.' that it is not that the consequences of a (false) defendant being confronted in one particular extend thus far[6] *viz.* that his testimony is not accepted (as a reliable one).

The text of **Kâtyâyana,** however, *viz.* " Even in suits involving several counts, the creditor (plaintiff) gets as much amount as he establishes by means of his witnesses," has a reference to (suits for a) paternal [1] debt. There the rule is that sons and others saying 'I do not know' in their answers in a suit with reference to several claims do not become guilty of prevarication; (and) even if a claim is proved against him in one particular he does not become a false litigant, and so the rule—"where the defendant denies all the particulars &c." has no application there, as there is no concealment and therefore no (scope for the application of the) rules of logic. The text of **Kâtyâyana** *viz.* 'Even in suits involving several counts &c.' is a general rule. Putting aside the 'false answer' which is the subject of a special treatise, the author treats it as an answer of ignorance.

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[1] *i. e.* its soundness can be established even by the test of logic as will be seen from the next sentence.

[2] *i. e.* the sage Yâjñavalkya.

[3] It may also be thus rendered; Even if it were different from the real facts.

[4] Chap. II. 23-24.

[5] Chap. II. 32.

[6] एतावद् &c. *i. e.* only thus far, to this extent. It is not that from this text the incapacity would extend to the length of the party's case not being accepted. The Author says that it extends further *viz.* 'नृपेण सर्वं दाप्य :'. The meaning is that in the case of false witnesses the only consequence is that their testimony is not accepted ; whereas in the case of dishonest litigants, not only that their testimony is not accepted but that they are punished to the extent of the entire claim in dispute being thrown out.

It may be said that by the text *viz.* "In suits for the recovery of debts and the like which are of a *quasi*-finite character, the amount in dispute being already ascertained, if the allegation is for a less or a greater amount, the claim does not succeed" **Kâtyâyana** has said that in suits containing more points than one, if only one point or more points than one which are involved, are proved by witnesses, the whole claim does not succeed. That being so, when only a portion is proved, from where does follow the proof of the portion that is not proved. To this the answer is, that that text means that where witnesses are produced as the means for proving the entire claim alleged in the written plaint, there in case the witnesses depose to a portion only or to much more than what was claimed then in such a case the whole claim does not succeed. Even there from the wording of the text *viz.* "being ascertained does not succeed", a doubt would even lie here as before and thus there is scope for other evidence (means of proof), on account of the rule in the text "after discarding all circumvention &c.[2]"

In the case of criminal complaints, however, the whole point alleged is considered as established even if only a portion is established by witnesses produced for proving the whole case; because crimes and the like are considered as proved by so much proof, as also on account of the text of **Kâtyâyana.** *viz.* "In complaints for cohabitation with women, crime and theft what is known as the point at issue is considered as established in its entirety if only a portion of the point in dispute is deposed to by the witnesses."

It may be said "Where the defendant sets up a denial, and the denial is not confined to one of the many particulars" &c. is a *Smṛiti* text; so is also "In suits involving several counts &c." a *Smṛiti* text. Thus there being a mutual conflict between these two *Smṛitis* why are they not considered as unauthoritative as they are opposed to each other? Why resort to (the rule of) appropriation? So the Author says:—

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[1] पित्रादिऋणविषयम् is a better reading and is adopted from Bâlambhaṭṭi. See Bâlambhatti page 24, l. 18.

[2] Yâjñ. II 19.

Yâjñavalkya Verse (21) 1.

* PAGE 16. **Where two smritis conflict, principles of equity as determined by popular usage shall prevail.**

Mitâksharâ:—Where *between two smritis* (**smrityoḥ.**) there is mutual *conflict* (**virodhaḥ**), there for the purpose of removing the conflict and determining[1] the matter in issue (**nyâya.**) *principles of equity*, comprising general rules together with the exceptions, (**balavân**) *shall prevail, i. e.* (will) have force.

It may be asked, 'from where should these principles be obtained'? So the Author says:—**Wyawahârataḥ iti** (*as determined by usage etc.*) are obtained from general usage i. e. ancient usage as observed among the elders and as determined by the two tests of affirmation and negation.[2] Hence even in the present case establishment ofthe rule is the only proper test. Thus should be applied even in other cases the rule regarding the appropriation and the rule of option.

Yâjñavlkya Verse (21) 2.

The rule however is that the science of law is stronger than the science of politics.

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[1] Note that here विषयव्यवस्थापनादौ = विषयव्यवस्थापनाय.

[2] It is better to note these two terms, which are likely to recur often and have an important place in the rules of logic and also of interpretation. अन्वय predicates a constant and invariable concomitance of the middle term or हेतु and the major term or साध्य (हेतुसाध्ययोर्व्याप्तिरन्वयः) The familiar instance of this is:—यत्र यत्र धूमः तत्र तत्र वन्हिः. 'Wherever there is smoke there is fire'—the invariable co-existence of fire with smoke is called in logic the relation of 'invariable Concomitance' or अन्वयव्याप्ति. Corresponding to and the opposite of the above is what is known as the व्यतिरेकव्याप्ति or an assertion of the concomitance of the absence of साध्य and the absence of हेतु e. g. "यत्र यत्र वान्हिर्नास्ति तत्र तत्र धूमोऽपि नास्ति" "Wherever there is no fire, there is no smoke also." The student will find a fitting comparison with this in the (1) Universal A Proposition of the English Logic e. g. All *x* is *y* and the (2) converted A proposition *e. g.* All not-*x* is not-*y*, respectively. A cause or हेतु is said to be connected with its effect by अन्वयव्यतिरेकव्याप्ति when both the affirmative and negative relations between the thing to be proved and the cause that proves can be equally asserted; such a हेतु alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the Vyâpti or universal proposition corresponds to the methods of agreement and difference in Mill's Logic. (*Apte*). The application of this in the context will be seen from the following illustration. "The question is whether a particular usage is proved to exist or not. Instances of its affirmation and an entire absence of its negation or non-enforcement would prove the custom under the अन्वयव्यतिरेक texts.

An exception to the general rule.

Mitâksharâ:—The science of politics e. g. the work of *Auśanasa* stands already excluded by the text 'in conformity with the principles of legal science[1]'; so the 'science of politics' referred to here is the one forming part of and incorporated in the 'science of law'. In the case of a *conflict* (**virodha**) between two smritis *i. e.* from the science of law and the science of politics (respectively), the science of law is stronger than the science of politics; this is the rule (**Sthitiḥ** *lit.* position) i. e. limit. The meaning is that although in themselves there is no distinction between the science of law and the science of politics as the authors of both are of equal [2] (authority), still the principal subject (of treatment) being law, while politics having only a subordinate position, the science of law has force. The importance of *Dharma* has already been demonstrated before.[3] Therefore, in the case of a conflict between the *Dharmaśâstra* (science of law) and the *Arthaśâstra* (science of politics) undoubtedly the *Arthaśastra* will yield; nor is there any scope for a Vishaya-vyawasthâ[4] (**विषयव्यवस्था**) or a Vikalpa (**विकल्प**).

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[1] Yâjñ II. 1 p. 1. ll. 13 & 14 above.

[2] Or it may even be translated as, 'as both are the compositions of the same (author.)"

समान–equal, or it may also mean, same. The meaning is that even if the same author lays down two texts one in the nature of a धर्म text and the other an अर्थशास्त्र text still having regard to the fact that it is the धर्मशास्त्र which is the प्रधान or principal subject of treatment the texts pertaining to the धर्मशास्त्र will have force.

[3] *i. e.* in the Ãchâradhyâya.

[4] Note these two terms विषयव्यवस्था and विकल्प.

विकल्प (Vikalpa) means option *i. e.* the rule of option. विषयव्यवस्था is an adjustment of the several subjects by appropriating each to its proper place.

According to Sanskrit writers if there be a direct and clear conflict between two texts, both lose their binding character and one is left to accept either at his option. There is also another course that is resorted to and that is by assigning the affirmative (भाव) and negative (अभाव) clauses to their proper and appropriate places and thus removing the conflict. An example will make this clear. "A Brâhmaṇa *may* eat flesh." This conflicts with the general prohibition of flesh against Brahmaṇs. Then follows the appropriation (विषयव्यवस्था) *viz.* "a Northern Brahmaṇa *may* eat flesh—a Southerner *must not.*" The reader will note the two texts, an apparent complict between which has introduced Verse 21.

A very good instance of विकल्प and विषयव्यवस्था may be found in Yâjn II. 277 "शस्त्रावपाते गर्भस्य पातने चोत्तमो दमः । उत्तमो वाधमो वाऽपि पुरुषस्त्रीप्रमापणे :" Commenting upon this विज्ञानेश्वर says पुरुषस्य स्त्रियाश्च प्रमापणे शीलवृत्ताद्यपेक्षयोत्तमो वा व्यवस्थितो वेदितव्य : ।

and this is further made clear by विश्वेश्वरभट्ट in the सुबोधिनी thus—शीलाचारवतः पुरुषस्य तथा स्त्रियाश्च मारणे उत्तम-साहस एव दंडः । शीलाचाररहितायास्तु मारणे प्रथमसाहस एवेति विकल्पव्यवस्था ज्ञेया.

It will thus be noted that either of these have a scope when there is a conflict. The author here says that there is no room for resorting to either as there is no conflict at all.

It[1] may be said, what is the illustration for this (proposition). Not certainly the text of **Manu** viz:— "One may slay without hesitation a desperado[2] who approaches (with a murderous intent) whether (he be) a preceptor, a child or an aged man, or a Brâhmaṇ deeply versed in the Vedas (*350*). By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret; (for in such a case) fury recoils upon fury.[3] (*351*). Also, "One should (certainly) kill on the field of battle a desparado who approaches with an intent to kill, even though he were a special scholar of the Vedas, and thereby he does not incur the sin of a Brâhmaṇ-killer" and similar others are the *Arthaśâstra* texts."This expiation has been prescribed for unintentionally killing a Brâhmaṇa; but for intentionally slaying a Brâhmaṇa no atonement is ordained", and such others are *Dharmaśastra*. texts and it is proper in the case of a conflict between the two, that the *Dharmaśastra* should have force, (since), these two (kinds of) texts not being likely to be in (reference to) one subject, there would be no conflict and the consideration of their force or weakness does not arise.

Moreover after stating (the text[4]) that one is not amenable to the punishment for slaying in a fair fight an assailant as also one who is intent upon killing women or Brâhmaṇs (while engaged) in self-defence or in the defence of the *dakshinâ*—wealth collected for distribution among the Brâhmaṇs assembled at a sacrifice and (other) utensils used for a sacrifice, by the text which begins with "the twiceborn may take up arms etc."[6] (and pro-ceeds) "in their own defence and in the defence of the *dakshiṇâ*, in a battle-field, and in the protection of women and Brâhmaṇs; he who kills within the limits laid down by law, incurs no guilt." The text viz. one may etc. a preceptor, or a child or an aged man[7] etc. has been given as an explanatory affirmation of the same[8]. Implying thereby that one may kill even the preceptor and others who are absolutely, immune from being killed, when they attack with a murderous intent, what then of others? From the use of the word *wâ*[1] (or), and also of *api* (even) in (the text) "even though he were a special scholar of the *Vedas*[2] &c." the inference is not (intended to be) suggested that the preceptor and others should be killed, as also from the text of *Sumantu* viz. "There is no guilt in killing an assailant (with a murderous intent) excepting (when it is) a cow or a Brâhmaṇa. And also according to the text of *Manu*[3] viz. "Let him not injure the preceptor, nor him who expounds the Vedas, nor the mother or the father; nor also the Brâhmaṇs, cows nor an ascetic." This text is used with a purpose (lit. meaning) inasmuch as it is intended to prohibit the killing of the preceptor and others (when they approach) as assassins, and not otherwise, as the prohibition of murder in general is already deducible from the general principles (of law). Even the text[4] "by killing a desperado the slayer incurs no guilt" is intended to apply to others than Brâhmaṇs. Since, (by the text) "an incendiary, a prisoner, one armed with a deadly weapon, a robber and one who causes the deprivation of land, wife and wealth these six are (known as *âtatâyinaś*) desperados or felons" and also "one who is armed with a sword, poison and fire, who is ready to utter a curse with hand uplifted, who kills by means of the *A'tharvaṇa* charms, who is a traitor to the King, who violates a married woman, who is ever ready to prick a hole (wherever found) one should know these and all such others as desperados or felons (âtatâyinaḥ)," the *âtatâyins* have been indicated generally. Therefore the result is that when Brâhmaṇs and also others are killed as assailants by inadvertance while being warded off by one acting in self-defence and having no intent to murder, in such a case a light expiation will be (sufficient) and no punishment from the King (will be necessary). Therefore another illustration should be cited here.

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[1] From this clause down to p. l. is stated the objection.

[2] आततायिन् This word has been translated as 'an assassin' in the Sacred Books of the East; but having regard to its wide connotation a *desperado* would be a proper rendering.

[3] Note the gloss of Kullûka. यस्माद्धन्तृगतो मन्युः क्रोधाभिमानिनी देवता हन्यमानगतम् क्रोधम् विवर्धयति *i. e.* The violence of the assailant generates and fosters the fury of the person attacked.

[4] Manu. XI. 89.

[5] Manu. VIII. 350.

[6] Manu. VIII. 348.

[7] Manu. VIII. 350.

[8] i. e. Chap. VIII. 348-349.

(To the above objection) the answer is: "As acquisition of a friend is superior to the acquisitions of gold or land, so one *PAGE 17 should endeavour for his acquisition" is an *Arthaśâstra* text. "In conformity with the principles of legal science, and divested of anger and avarice" is a *Dharmaśâstra* text. There occurs a conflict of these two in some cases. As e. g. in a suit where the procedure is of a fourfold character; if success is secured to one party, acquisition of a friend would be made, but the *Dharmaśâstra* would not be followed; while if success is secured to another party, the *Dharmaśâstra* would be followed; but (it) would prejudice the acquisition of a friend, in such a case the *Dharma śâstra* has more force than *Arthaśâstra*. Hence **Âpastamba** has shown the importance of expiation in the text[1] "This very same (penance is ordained) for him who when his *Dharma* (duty) and *Artha* (gain) come into conflict, chooses the *Artha*." By the expression "This very same" the twelve years' expiation[2] is intended.

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[1] In Manu. VIII. 350 (See above).

[2] See above p. 1.

[3] Ch. IV. 163.

[4] Manu. VIII. 351.

It has been said above[3] that "Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established," anticipating an enquiry as to what that evidence is the Author says:—

Yájñavalkya Verse 22.

Evidence has been laid down to consist of a writing, possession and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence)

Mitâksharâ:—Pramâṇa (*evidence,*) is that by (means of) which a thing is measured or discriminated. That, moreover, is twofold, *viz.*, **human** and **divine**. Of these, (**Mânavam**) human evidence is of (a) threefold (character) *i. e.* **writing, possession** and **witnesses**; so it *has been laid down* (**Kirtitam**) by learned sages. Then (again), writings are of two kinds. A royal grant (*S'âsana*) and a scroll or deed (**Chirakam.**) A Royal grant has been defined before[4]. A scroll or deed (is as) will be defined (hereafter)[5] Possession (*bhukti*) means enjoyment by (actual) occupation. Witnesses *i. e.* of the character and kinds to be described hereafter[6].

The four kinds of evidence.

It may be said that a writing and witnesses may properly be (accepted as) evidence as they may be included in the *S'âbda*[7] mode of proof (*pramâṇa*), as they[8] serve as a medium *i. e.* of expressing (the meaning of) words. but how can possession be a mode of proof? To that the answer is that even possession when satisfying certain (specified) conditions will invariably and correctly measure the probative value of the sale and other things which are (set up as) the basis of ownership, and assist an inference (to be drawn), or in the absence of a direct inference a conclusion may be drawn by implication and thus it (*i. e.* possession) may be included either in an *inference* (*anumâna*) or an *implication* (*arthâpatti*) and be a (good) means of proof.

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[1] I. 9. 24, 23.

[2] See Âpastamba I. 9, 24, 20.

[3] Yâjñ. II-7 (English Tr. p. 18 lines 34-35 above.)

[4] Yâjñ. I. 318.

[5] Yâjñ. II. 84.

[6] *i. e.* in Section V "Of the Witnesses."

[7] One of the eight Pramânas.

[8] शब्दाभिव्यक्ति = शब्दस्य अभिव्यक्तिः &c.

In the absence of all these three (modes of proof) viz: writing &c., the author has mentioned[1] the evidentiary value of an ordeal, the character and kinds of which will presently be described, or of any subject to the conditions as to the kind, country, time and the (particular) thing. That ordeals are (to be accepted as) a mode of proof is inferable from this very text, as the nature and conclusiveness of ordeals are derived from traditional lore *i. e.* Vedic-Texts. Hence where two persons simultaneously go to an officer of law in reference to a matter in dispute between them, and one adduces human evidence while the other resorts to the divine test, in such a case the human evidence alone should be accepted. To the same effect is **Kâtyâyana**:—"If one (party) sets up human evidence and the other resorts to the divine test, in such a case the King should accept the human evidence and not the divine test". Even so where human evidence is available for establishing (only) a portion of the principal point (at issue), even there the divine test should not be resorted to. Thus, in a suit where the complaint is that 'having received a hundred at this rate, the defendant does not pay it back' and upon a denial (of the claim by the defendant) there are witnesses for (establishing) the acceptance of the loan, but not for the (particular) amount or the rate of interest, and the plaintiff offers to prove his case by an ordeal, in such a case inasmuch as under the rule (of procedure) viz. 'regarding proof of a particular portion only,' the particular proof about the amount and rate of interest follows (by implication), there is no scope for an ordeal. As has been observed by **Kâtyâyana**:—"Even if the human evidence offered by the contending parties cover only a portion of the subject-matter, it should be accepted, and not the divine test even if it (*i. e.* the divine test) be sufficient to cover the whole suit." As for the rule. " The trial of secret offenders must (necessarily) be by means of ordeals", even this (test) is intended to govern those cases where human testimony is unavailable. As to what has been said by **Nârada**[2] viz. "(Where a transaction has taken place) in a forest, in a solitary place,[3] at night or in the interior of a house and in cases of heinous offences or of denial of a deposit, a divine test is permissible"; even that is (applicable) when human evidence is absolutely impossible (to be adduced). Therefore the general rule (that naturally follows) is that a trial by ordeal is allowable only where human evidence does not exist.

An exception to this, however, has to be noticed viz. " In trials concerning heinous offences of a long standing or in the case of assaults or slander or concerning acts proceeding from violence, the ordeal itself are the witnesses."[1]

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[1] *i. e.* in the principal verse of Yâjñavalkya.

[2] II. 30.

[3] Dr. Jolly takes निर्जन as an adjective of अरण्य and translates " in a solitary forest," but see the gloss of Asahâya on this:—" अरण्ये वनमध्ये पत्तने वा निर्जनप्रदेशे । "

Moreover a similar rule is found in some places about a writing etc. As in "determining rules laid down for *pûgas*[2], the
* PAGE 18. *S'reṇis*, the *Gaṇas* and other trades, the evidence (to be adduced) is writing and not an ordeal or witnesses." Similarly—'In suits regarding the right of door or way or the right of erecting or making these, as also in suits regarding the enjoyment of a surface or watercourse, the most important (means of) proof is that of possession; and neither an ordeal nor the witnesses.' So also "In suits regarding valid and invalid gifts,, in disputes between a master and his servants, in cases of rescission of (the contract of) sale, and also where after purchasing a thing one does not wish to pay the price, in disputes (arising out) of gambling (with dice) and betting (with animals), wherever a dispute arises in any of these cases, witnesses have been prescribed as the means of proof, and not an ordeal or a writing."

When there is evidence on both sides, and when there exist no circumstances which would help in discriminating the strength or infirmity of either, (a question might arise) how should the strength of the several proofs adduced by the plaintiff and defendant be determined? so the Author says:—

Yâjñvalkya Verse 23 (1).

In all[3] civil disputes regarding property, evidence adduced in support of a later transaction preponderates.

Mitâksharâ:— In all money disputes such as payment of debts and others *later transaction*. (**Uttarâ kriyâ**)—that which is established is a *Kriyâ i. e.* invesaigation or proof. When the *evidence in support of a later transaction* is established, and it preponderates (**Balavatî**), the party setting it up becomes successful. (And in such a case) even if the allegation in the plaint be established, the party setting it up is defeated. As where a certain person establishes a loan by proving receipt, while the other party proves its non-existence by repayment, in such a case where the receipt and payment back are (duly) established by (proper) evidence, this (evidence of) payment back has force and the party who sets up repayment succeeds. Similarly where after first taking (a loan) at two per cent. a party acknowledged (to pay) at three per cent., in such a case even when there is good evidence for both the facts, the acknowledgment at three per cent. has force. Because the general rule is that of two contradictory facts unless the prior fact is refuted, the truth of the later one does not become established, as it comes later (in order). It has also been said "a later fact is not established, unless the prior one is refuted."

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[1] This text is ascribed to Brihaspati, See Mandlik p. 9, l. 11, Sk.

[2] पूग and श्रेणी, See Yâjñ. II. 30 and Mitâksharâ p. 24, ll.15-16, where Vijñânes'wara thus defines.—

पूगाः समूहाः । भिन्नजातीनाम् भिन्नवृत्तीनाम् एकस्थाननिवासिनाम् संघाताः ।
and श्रेणयो—नानाजातीनामेकजातीनामप्येकजातिकर्मोपजीविनाम् संघाताः ।

[3] अर्थविवाद–This has been rendered by Mr. Mandlik as 'money-disputes.' Having regard, however, to the proper meaning and scope of the expression here, it would not be an accurate translation. An अर्थविवाद is a dispute regarding title to or possession of property and the property may be moveable or immoveable. This has been made clear by the author himself in his gloss on Yâjñ. Verse (2) see. Sanskrit p. 11 1. 5. 'सर्वेष्वर्थविवादेषु, मन्युकृतेषु'. An अर्थविवाद is used in opposition to a साहसाभियोग । मन्युकृताभियोग or any such suits the origin of which is in some threat or similar act and not in a substantial claim to property.

The Author mentions an exception to this (rule)

Yâjñavalkya Verse 23 (2).

In the case of a pledge, a gift and a sale, however, evidence in support of the prior claim preponderates.

Mitâksharâ:—In (any of) the three suits concerning a pledge and others, proof of a prior claim alone preponderates. It is thus when a man after mortgaging his field with one and obtaining some loan again mortgages it with another and obtains something, in such a case, it (*i.e.* the field) belongs to the first only and not to the second. So also in the case of gifts and sales.

It may be urged that there being no ownership (left) in the subject-matter of a mortgage, a second hypothecation does not appear probable: similarly, that the gift or sale of what has been (already) given or sold does not arise at all; and that this text is (thus) meaningless. To this the answer is, even when no ownership exists, and still when from ignorance or avarice one has a mortgage made again (over the same subject-matter) in such a case the prior transaction alone has force. Thus it is proved beyond doubt that this text is based on reason.

While wishing to establish the evidentiary value of possessions when accompained by certain qualifying circumstances, the Author proceeds to mention other results which flow from a certain kind of possession.

Yâjñavalkya Verse 24.

The loss of (the right to) land occurs after twenty years to him who while he sees his land being enjoyed by another (for twenty years) looks

on and does not object; the loss of money takes place after ten years (under similar circumstances.)

Mitaksharâ:—By another (**Pareṇa**) *i. e.* by a stranger (lit. by one having no connection (whatsoever), *Being enjoyed* (**Bhujyamânam**) *i. e.* either land or wealth. Looks on and does not object (**Passyataḥ abruwataḥ**) *i. e.* does not prevent him; e. g. thus.—"This is my land; you should not trespass"; Of that land thus continuing for twenty years occurs a loss caused by the enjoyment for twenty years without protest. Of wealth, however, (*i. e.*, moveables) such as the elephant, horse etc. the loss occurs after ten years.

(*To this an objection is raised*). Indeed this is not proper. Certainly ownership does not become extinct on account of non-protest, non-protest not being known either in popular usage or in *S'âstra* as a cause of extinguishing ownership, (just) as a gift or a sale is. Nor also ownership acquired by possession for twenty years; because possession is not the (means of) proof of ownership; also because (of the rule that) evidence (*pramâṇa*) does not *create* the matter to be established (*prameya*)[1] it (*i. e.* the *pramâṇa*,) has also not been mentioned among the circumstances giving rise to a title by ownership. For (in the text) " A man becomes owner by inheritance, purchase, partition, seizure or finding. The additional (mode of acquisition) in the case of a *Brâhmaṇa*, is gift; in the case of a *Kshatriya* gains of conquest and in the case of a *Vaiśya* and *Sudra* gains (by labour.)" **Gautama**[2] only mentions these eight as the sources of title by ownership, he (does) not (mention) possession.

Nor would it be correct to say that this very text demonstrates a tweny years' possession as an originating cause of * PAGE 19 ownership. A title by ownership or its origin are indicated (even) by general popular repute, and not (necessarily) by the *S'âstra* alone. This, however, will be more fully dealt with in the chapter on Partition. The text of **Gautama** is only intended as (laying down) a general rule.

Moreover, the text *viz.* "He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief[3]" is opposed to the theory that possession without title is the source of ownership. Nor also would it be proper to say that the text "He who enjoys without a title &c." is meant to apply to a possession without notice (to the owner), and the text "*Paśsyatobruvataḥ*[1] &c." to possession with notice (to the owner). The text "he who enjoys without a title" is general in its statement. As **Kâtyâyana** also has said "The rule has been established that one who has forcibly taken away beasts, women or men should not rest his case on possession (of these)". Moreover an extinction of title is not possible in case of a possession with notice as it is improbable that any cause of an extinction of title would (be suffered to) exist. [2]

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[1] प्रमेय (*Prameya*) is that which is established; 'the point at issue.' प्रमाण (*Pramâṇa*) is the means of establishing the point at issue. The meaning in the text is that a *pramâṇa* or evidence can only *indicate* or *prove* something which is already in existence; it cannot *create* it *i. e.* a *pramâṇa* cannot be the 'originating cause' of a *prameya*.

[2] X. 38-40.

[3] Bâlambhaṭṭa and others ascribe this text to *Manu*. It is not to be found in the editions of *Manu*. It is, however, found in the Nârada Smriti I. 87.

Moreover, it should not be supposed that inasmuch as the evidence in support of prior acts preponderates in cases of pledges, gifts and sales, this text is intended to lay down the preponderance of the evidence of transactions later in date amounting to twenty years' possession in case of land and ten years' possession in case of wealth (or moveables). Since in the case of these in reality a second transaction itself is not possible, it is only (that which is) one's own (property) that is fit to be pledged, given away, or sold. Nor can there be ownership over what has been pledged, given away or sold. Moreover a penalty has been laid down for a gift and acceptance of that over which he (*i. e.* the giver) does not posses ownership. "He who accepts (as a gift) that which may not be given, as also he who gives it shall both be punished like thieves, and both made to pay the fine ordained for an offence of the highest degree (*Uttama-Sâhasa*)." Moreover if this verse were to be (accepted as) an exception to (the rule regarding the three (transactions) *viz.* pledges etc. the verse next following does not appear proper as an exception in the cases of *pledges*, *boundaries* etc. Therefore the extinction of (title to) land etc. does not appropriately follow at all. Nor is the cause of action lost. For in the text:-"Of him who neglects and stands by if a period as aforesaid is passed, the suit does not succeed," **Nârada** has mentioned the extinction of a *remedy* at law when there is neglect and such neglect is not accompanied by circumstances explaining it; he does not lay down the extinction of the *right* (itself). Similarly in the text "If the owner is neither an idiot[3] nor a minor and if his chattel is enjoyed (by another) before his eyes, it becomes lost to him and the (adverse) possessor becomes entitled to the property." Even *Manu*[1] has indicated the loss of remedy only at law and not of the title itself. The loss of the remedy at law would be in this way. The person in possession might say—"This man not being either anidiot, an infant or a minor, I have enjoyed (the property) in his presence without a protest for twenty years and there are several witnesses for (supporting) this. If it was (a fact) that I was illegally in possession of his property, then why should he have stood by for so long a time?" and here the (true) owner would have no answer. Even then the title to the thing would still remain with the (true) owner, although he would have no answer as (indicated) above—vide the rule—"After discarding all circumvention, the King should decide disputes according to actual facts."[2]

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[1] *i. e.* Yâjñ. 11. 24, the verse of this commentary.

[2] The construction here is rather peculiar. The clause समक्षभोग etc. in l. 8. is to be taken as part of the objection already commenced and not as a separate objection. The construction here is typically terse —मिताक्षरा. The meaning would be fully brought out by the following complete statement of the component parts in their order:—समक्षभोगे हानेरसंभवः । हानिकारणाभावात् । An extinction of title is not probable in the case of a possession with notice; because no one would allow any circumstance to exist or continue which would in the end lead to an extinction of title.

[3] Mark the following text of *Nárada* distinguishing बाल, पौगंड, and शिशु. गर्भस्थसदृशो ज्ञेय आऽष्टमाद्वत्सराच्छिशुः । बाल आषोडशाद्वर्षात्पौगण्ड इति शस्यते ॥ १-२६:

It may also be said: " Even though the title is not extinguished nor (also) is the remedy lost, still there would be the *danger* of the loss of remedy and in order to avoid this it has been laid down that one should not stand by. (To this) however (the answer is that) it is not so; for, possession (which is) within memory cannot be a cause of creating any apprehension as to the loss (of title); (and moreover) if the only object was to lay down the rule that (one) should not stand by, the use of the term *twenty* would be without a purpose.

It may next be said that by the use of the word twenty, it is intended to lay down the rule that possession for more than twenty years (in itself) serves as a refutation of all objections regarding the defects or flaws in the document, as says **Kâtyâyana.** "Where possession is enjoyed of property belonging to one who is competent, for (a period of) over twenty years and under a document, that document is (presumed to be) free from (all) defects." Even that is not so; for in that case the rule that after twenty years all objections regarding flaws in a document become barred, having a general application, it would not be possible to set up an exception even in the case of pledges etc.[3] As says **Kâtyâyana:** " If a pledge is actually enjoyed as such for twenty years, it (*i. e.* the pledge) is proved by that document (which then becomes) free from all (objections as to) defects." So also, " After a boundary dispute is settled, a document describing the boundaries has been ordained; its defects should be pointed out before yet twenty years (have elapsed)." By this, the text, viz. "(the loss) of money takes place after ten years" is also refuted. Therefore another meaning should be expounded for this verse.[4]

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[1] Ch. VII. 148.

[2] Yâjn. II. 19 Page 30. II. 33-34 above).

[3] *i. e.* to say, and thereby the text of Yâjñavalkya II. 25 would be meaningless.

[4] Here ends the final objection which began with the words " नन्वेतद्नुपपन्नम् " on page 18, l. 28 (Sk. Mit.)

To this the answer is:[1] Here the loss intended to be indicated is that of the profits (or accession) of the land as well as of the wealth, not of the corpus itself, nor of the right at law. For, even if at law the owner gets (back) the land after twenty years' possession without protest (by him), still he does not get a right to follow the proceeds, both on account of his own fault in the form of non-protest as also on account of this text. In the case of a possession without notice, however, he (*i. e.* the owner) secures the right to follow the proceeds also, under the text, *Paśśyato &c.* (Yâjñ. II, 24). In possession with notice and protest, under the text, *Abruvataḥ* &c. (see above p. l.). before twenty years he succeeds (even) when there is possession without protest, as the term twenty is used.

* PAGE 20.

It may be objected, thus. Indeed, in that case loss of profits[2] would not follow, inasmuch as the profits arising therefrom possess (the characteristics of) ownership. (To this the answer is) True; it would be so where the accession would remain in the same condition without detriment to its natural state as is the case with beetle and jack fruit trees &c.[3] That, moreover, which arises (as profit) from the land and is perishable by use; in such a case there is loss of ownership as the thing itself has perished. By the text[4] " He who enjoys without a title even if it is before many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief" it would follow that assessing in (terms of) an equal money value an amount equal (to the profits) should be made payable as (is done) in the case of a thief; but this conclusion is refuted by the text, "a loss takes place after twenty years." Moreover the punishment from the king still exists even (when the enjoyment is) for more than twenty years on account of a double reason *viz.* the possession being without title, and there being no exception stated (to the general rule). Therefore by reason of the default of the owner in the shape of neglect or laches as also on account of this text the rule is established that those proceeds are not recovered as are lost for more than twenty years. This also explains the text—"in the case of wealth the loss takes place after ten years"

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[1] Vijñâneśwara draws the following सिद्धांत after the above discussion. The reader will note this as a very good instance of a सिद्धांत of the Sanskrit logic. Vijnaneśwara first gives a literal meaning of the verse at p. 18 ll. 25-27. Then he starts a discussion from p. 18 l. 28 and draws the conclusion or सिद्धांत on p. 20, ll.15.

[2] Mark the word फल (*Phala*). Its literal meaning is fruit. Here it has to be variously rendered as fruit, profits, proceeds and accession according as suits the context in each particular case.

[3] The meaning is that such accessories as remain unaffected even when the fruits have been removed would not fall under the term फल in the sense that the right regarding फल would be lost. In other words, where the accessory is itself the फल as in the case of crops, ground-nuts &c. there is no third stage between the land and the fruit and in each case there would occur the फलहानि. But where the fruits or profits are distinct from and a further addition to things which in themselves are accessions to the land, such things have a permanence of their own and are to be distinguished from the fruits which are perishable and are of a transitory character. Accessions of the former kind do stand without any detriment to their state *e. g.* mango-tree, though the fruits are taken away the tree, which in itself is distinct from and an accession to the lands, stands unaffected

[4] Nârada. I. 87.

Yâjñavalkya Verse 25

Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor, as also in the case of sealed deposits and even in the case of wealth belonging to the kings, women and Brâhmaṇas.

Mitâksharâ:—The pledge and a boundary and an open deposit (together make up the compound expression) pledges, boundaries and open deposits'; the dull in intellect and the minor (together make up the compound) ' the dull in intellect and the minor.' Their wealth (is) "the wealth of the dull in intellect and the minor", "pledges, boundaries and open deposits" and "the wealth of the dull in intellect and the minor" (make up the compound expression) "pledges, boundaries, open deposits and the wealth of the dull in intellect and the minor;" excepting these. **Upanikshepa** (*an open deposit*) is wealth placed for safe custody in another's hand after exhibiting the quality and the quantity. As says **Nârada**: " Where a man entrusts any property of his own to another in confidence and without suspicion, it is called by the learned a Deposit—a (separate) title of law." Placing near is (called) **Upanidhiḥ** (deposit).

In the case of a pledge &c. no loss (of title) occurs of land even after twenty years or of wealth after ten years even when the owner looks on and does not protest; because (in that case) that[1] kind of default of a party is wanting, and also inasmuch as in each case exist circumstances which explain the (apparent) delay.

Moreover the possession of a pledge is held with the condition of the pledge attached to it and thus there is no default by a party even if there is delay.[2] A delay is possible in the case of (disputes regarding) boundary as it is easy of proof on account of the marks made permanent by (the spreading of) husk,[1] fire etc. In the case of open and ordinary deposits, use and enjoyment (of the subject--matter) is prohibited; and the neglect or delay is explained as the party gets the property with interest and profits where such property is in transgression of the prohibition. In the case of the "dull in intellect and the minors," delay is very justifiable on account of the dullness and the minority. In the case of the king, on account of his absorption in various duties. In the case of women on account of ignorance as well as immaturity (of intellect) or unskilfulness. As for a learned Brâhmaṇa delay is proper as he is engrossed in studying and teaching (the Vedas) and in thinking over their import and bringing it into practice. Therefore in the case of pledges etc. there being a (proper) reason for (explaining) delay in all cases, no loss of profits ever occurs (even) when there is possession with notice and without protest.

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[1] *That kind of default* तथाविधस्य *i. e.* of the kind which would bring about a loss of title.

[2] *i. e.* even if the suit is not brought within the period ordinarily assigned for suits. of that nature.

उपेक्षा means-not bringing an action—laches.

Yâjñavalkya Verse 26.

A trespasser upon pledges etc. should be made to pay the principal amount to the owner, and also to the king a fine of equal amount or according to (his) capacity.

Mitâksharâ,—*Of pledges &c.* (**Âdhyâdînâm**) *i. e.* as far as the wealth of 'learned Brâhmaṇs' (in verst 25 above). *A trespasser*—because he bases his title upon the strength of long-continued possession. *Principal amount* (**Dhanam**) *i. e.* the amount, the *subject of dispute.*

Here the clause" Should be made to pay (**Dâpayet**) the owner" is an *Anuwâda*[2] and the clause " as also a fine equal to it (**Dandam cha tatsamam**)—*i. e.* equal to the amount in dispute" should be made to pay to the king is the *Vidhi.* Although a fine of an equal mount is not in the case of a house, lands &c. still the penalty mentioned further on (Yâjñ. II. 155) *viz.* "For destroying boundary marks, and for encroaching beyond &c.' should be adopted.

* PAGE 21.

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[1] तुष—(*tusha*) is the husk of paddy. It, among other things, is interred into a pit dug deep and covered over by the earth. The marks created in this way acquire a permanence which is not lost and serve as good evidence in deciding boundary disputes, see further on Yâjñ's. II, 151 and Vijñ's. comments.

[2] A *Vidhi* is the principal statement and an *anuwâda* is only an explanatory repetition of a *Vidhi*; see Bâlambhatti. Eng. Tr. p. 9 Notes 1 and 2. The meaning is that payment of a fine, the imposition of a penalty is the principal thing, while restitution or compensation to the owner is only a subordinate one.

The Author mentions a rule imposing special penalty in cases of pledges &c.

If perhaps, the trespasser, on account of his immense riches is not (likely to be sufficiently) punished by a fine equal in amount to the principal, then he should be made to pay an amount according to his capacity—(*i. e.*) so much should be caused to be paid, by as much as his arrogance would be tamed down. For in the text[1]:- "They declare that the word *daṇḍa* is derived from *damana* (taming down or restraining); therefore he (the king) should restrain the unrestrained." the word *danda* is used in the sense of restraining or taming down. He, however, who does not possess wealth even equal in amount to the principal should be made to pay only so much as would (serve to) punish him. He, moreover, who has no money whatever, should be punished by the (several modes of punishment such as) *Dhigdanda* and others. For **Manu** also says[2]: "He should punish first with the expression (*dhik*) f~~y~~ie or shame ! then by (a harsh) reproof; thirdly by a fine (in money), and after that by the punishment of chastisement."

The punishment of chastisement of the body has been indicated to be tenfold in the case of persons excepting Brâhmaṇs. So **Manu** also says,[3] "Manu, born of the Self-existant has mentioned, in the case of the three (lower) **varṇas** (orders) ten places for (inflicting) punishment; but a Brâhmaṇa shall go unhurt (from the country); (the ten places are) the organ, the belly, the tongue, the two hands, the two feet, the eye, the nose, the two ears, the wealth and also the (whole) body." It should be observed that the punishment should be administered only to such parts of the body as the organ &c. by means of which an offence has been committed; or (he) should be made to serve on labour or be consigned to a prison-house. As has been said by **K âṭyâyana** "If it is found that he is unable to make the payment of money he should be consigned to a prison-house; excepting (in the case of) a Brâhmaṇa". In the case of a Brâhmaṇa, however, in the absence of money, 'prevention of the act &c.' should be ordered: as says **Gautama**,[4] "Preventing (a repetition of) the deed, publicly proclaiming his crime, banishment, and branding (are the punishments for a Brâhmaṇa) and he (*i.e.* the king) who does not do his duty (by inflicting punishment) &c."[5] **Nârada**[6] also after laying down the law *viz*. "Corporal punishment, confiscation of entire property, banishment[7] from the town and branding, as well as amputation of the (guilty) limb are (declared to be) the punishments for *Sâhasa* of the highest degree; this law of punishment is ordained for all (castes) indiscriminately," has said,[1] "Excepting (only) corporal punishment in the case of a Brâhmaṇa. A Brâhmaṇa must not be subjected to corporal punishment. Shaving of the head, banishment from the town, branding on the forehead with a mark of the crime of which he has been convicted and expulsion after parading on an ass shall be his punishment." The rule for branding has (there) been laid down (thus)–"For violating a Guru's bed (the mark of) a female part shall be impressed; for drinking liquor, the sign of a tavern; for theft, a dog's foot; and for murdering a Brâhmaṇa a headless corpse."[2] As for the text of **Âpastamba** *viz.* "In the case of a Brâhmaṇa, his eye-sight should be blocked." The meaning thereof is that at the time of banishing a Brâhmaṇa from the town his eye-sight should be blocked by means of a cloth etc. and not that his eyes should be pulled out. For otherwise there would be a contradiction with the texts of **Manu** and **Gautama** *viz.* "a Brâhmaṇa should be exiled unhurt" 'a corporal punishment is not (laid down) for a Brâhmaṇa." So enough of prolixity.

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[1] Gautama X. 28.

[2] Ch. VIII. 129.

[3] Ch. VIII. 124–125

[4] XII. 47.

[5] The reading given in the text does not appear to be correct. The correct reading would be अप्रवृत्ताविति. The full text of गौतम being अप्रवृत्तौ प्रायश्चित्ती सः *i. e.* the king who does not do his duty in this way makes himself liable for a penance.

[6] Ch. XIV. 8. 9.

[7] व्रज् is used here-in the sense of प्रव्रज्-send into exile.

It has been laid down that possession is evidence of title of ownership wherever possession is an invariable accompaniment of ownership. As, however, every kind of possession is not necessarily coupled with ownership, it may be asked, what kind of possession (is it that) is meant here? so the Auther says.

Yâjñavalkya Verse 27 (1)

Title is superior to possession excepting where it (i. e. possession) has descended from a line of ancestors.

Mitâksharâ:—The origin of ownership, such as gift, purchase &c. is (called) **Âgama** (title). It is more powerful than even possession, inasmuch as possession as an index of ownership, is dependent upon title. As says **Nârada**[3] "After (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does not make (any) evidence (of ownership)."

Nor, moreover, can it be said that the title to ownership can be obtaind from mere possession as it is likely that property which belongs even to others may be enjoyed by trespass &c. Hence also has it been said:[4]

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[1] Ch. XIV. 9. 10.

[2] Manu. IX. 237.

[3] ch. I. 85.

[4] by Narada ch. I. 86.

"He who pleads possession only and no title of any sort, should be considered as a thief in consequence of his pleading such illegitimate possession." Therefore the conclusion is that only that possession which is coupled with the five characteristics *viz*: that it is with title, long-continued, uninterrupted, without a protest, and with notice to the opponent is (good) evidence (of ownership). Moreover it has been said:[1] "even possession is fivefold *viz*: it is with a title, long-continued, uninterrupted, without a protest (from the opponent) and with notice to[2] the opponent.

Sometime however, possession is accepted as evidence and (in such a case) it does not depend upon title, so the Author says:

*PAGE 22 **Vinâ pûrwakramâgatâditi** (*excepting where it has descended from a line of ancestors*). **Pûrvakramaḥ** (line of ancestors) is the (continued) line of the past three ancestors such as the father and the rest. Excepting **(Vinâ)** that possession (**Bhoga**) which has come down in this way, title is superior (**Âgamo abhyadhikaḥ**); this is the context. The meaning is that such a possession being even superior to title is (good) evidence independently of title.

Even then it is independent of the knowledge of a (lawful) title, and not of its existence itself. It should be marked that the existence of title is deducible from that (*i.e.* possession) itself. Moreover, the text 'excepting when it comes down from a line of ancestors' refers to immemorial possession; while the text "title is superior to possession" refers to possession within memory. Hence also in the case of possession within memory it (*i. e.* possession) has evidentiary value only when it co-exists with (the means of) knowledge of title, because if the absence of knowledge is not here properly accounted for, it is possible that an (absolute) absence of (a legal) title may be presumed. In the case of immemorial possession, however, a long continued possession is itself evidence (of ownership) independently of the knowledge of title, because in that case there is an absolute absence of the means by which want of knowledge of the origin (or title) is accounted for. This very thing has been made clear by **Kâtyâyana**[3] "In cases (falling) within the memory of man, possession in the case of land, is regarded as evidence of ownership when it is with title. But in cases (extending) beyond human memory, enjoyment by three generations suffices, on account of the absence (of knowledge) of (the proof of) title." Time within the memory of man extends as far as a hundred years. As there is the *Śruti* "a (*purusha*) man has a hundred years' (duration) of life." *Anugamâbhâvât* (on account of the absence of proof &c.) *i. e.* owing to the absence of a positive certainty as to the non-existence of title on account of the non-existence of proper means of the knowledge of title.[1] Therefore posssesion creates ownership when it is for more than a hundred years (which is) uninterrupted, without a protest (with the knowledge) and in the presence of the opponent and when the origin of title has not been determined, inasmuch as a (legal) title is presumed in the absence of (proof to) the contrary. Even in the case where possession extends beyond the memory of man it is not evidence (of ownership) if there is a tradition about its being without a title. Hence also has it been said[2] that "He who enjoys without a title even if it be for many hundred years, the ruler of the land shall inflict on that sinful man the punishment ordained for a thief."

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[1] by Vyâsa.

[2] *i.e.* in the presence of the defendant.

[3] Comp. Nârada I. 89.

It should not, however, be supposed by the use of the singular number in "He who enjoys without a title" and the use of the word *even* (*api*) in

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[1] योग्यानुपलाब्धि— mark this term. उपलाब्धि means ज्ञान or knowledge; and an अनुपलाब्धि is its absence. An अनुपलाब्धि may occur in two cases *viz.* (I) where there is a capacity for the perception, but still there is want of perception; and in this case the अनुपलाब्धि is योग्या, and secondly (2) where there is an absolute absence of capacity for perception and therfore there is want of perception in which case there is योग्यानुपलब्ध्यभाव. Thus, घटज्ञानाभाव may be possible in two cases (1) where the घटज्ञानाभाव is due not to an absolute absence of the means of perception of the घट such as eyes &c. but still there is ज्ञानाभाव. Here no doubt there is an अनुपलाब्धि in spite of the existence of circumstances necessary for an उपलाब्धि *i. e.* there exists an initial capacity for the perception but still an imperception occurs and so the अनुपलाब्धि is योग्या. Stated in simple language where there is योग्यता for उपलाब्धि, but still there is an अनुपलाब्धि we have a योग्यानुपलाब्धि see *Bâlambhaṭṭi* p. 42 l. 3. "योग्यत्वेसत्यनुपलाब्धि" (2) where, however, there is an absolute absence of the (योग्यता) capacity for perception there is no possibility of an उपलब्धि at all as e. g. on account of blindness &c. in such a case there is अनुपलाब्धि but not a योग्यानुपलाब्धि so there is a योग्यानुपब्ध्यभाव.

In the present contex, where the possession is recent it is possible to ascertain the origin, but there may exist circumstances which may account for the non--knowledge (अनुपलब्धि)of the origin, in such a case there is योग्यानुपलब्धि. In the case of long—continued possession the origin of title is not known and it is not known because it is absolutely impossible to know it. Here there is योग्यानुपलब्ध्यभाव.

The purport of the above may be put in short and simple language thus: Non-peroeption of a thing may be due to two circumstances *viz.*(1) absence of means of perception but with a capacity to perceive and (2) absence of the capacity for perception—In (1) it is योग्यानुपलब्धि in (2) it is योग्यानुपलब्ध्यभाव: *e. g.* the question is whether a man is learned.' For determining this, learned men are required to test the capacity of the man who says that he is learned. If learned men are available and still the capacity or learning of the man does not come out it may be properly said that the learning does not exist at all—here there is a योग्यानुपलब्धि. But if learned men are not available and the capacity remains undetermined on that account there is an अनुपलाब्धि which may be explained by a proper reason and therefore there is a योग्यानुपनब्ध्यभाव.

[2] Nârada I. 87.

"even if it be for many hundred years", that a punishment has been ordained (only) for the first acquirer without title even if the possession is held for a long time. This does not hold as (in that case) in the case of the second and the third generation even a possession without title may come to be accepted as evidence (of ownership), as **Nârada** has said: "In the case of the first acquirer, gift is the (proper) cause (of title); while for the intermediate generations possession with title (is the cause)." Therefore in all cases of possession without title the rule (laid down in) "he who enjoys without a title &c." should be observed. As to what has been said[1] *viz.* "When possession has been successively held, even though unlawfully, by the three ancestors and the father the property (so held) cannot be taken away from him, because it has descended through three (successive) lives in order-", even there it should be construed as "by the three ancestors along with the father". Still "descended through three (successive) lives in order" is indicative of a period beyond the memory of man. (Because) if it be taken (only as) referring to three (particular) lives, it is possible that three lives might be over even within the space of one year and possession without ownership might become evidence (of ownership) even in the second year (of occupation). And in that case there would be a conflict with the *Smṛiti.* "In cases (falling) within the memory of man possession, in the case of land, is regarded as evidence of ownership when it is with title."

Inasmuch as the word Api (even though) has been used in the text *Annyâyenâpi yadbhuktaṃ* (when possession has been held even though unlawfully &c.) should be construed as follows:—"what has been possessed, cannot be taken away, even though it be unlawfully (held), what then where the illegality (of the possession) is undetermined." As to what has been said by **Hârîtâ** *viz.* "what has been held in enjoyment in continuation by three (generations of) ancestors without any title whatsoever and what has descended through three (successive) lives in order, cannot be taken away"; even there (the expression) *atyantamâgamaṃ vinâ* (without any title whatsoever) is to be explained as without any available title &c. and not without any title at all. It has (already) been said that there cannot be ownership even with a hundred (generations) of possession if the title itself is not available. The import of *Kramât tripurushâgataṃ* (descended through three lives in order) has been explained.

It may be said "Possession cannot properly be accepted as evidence of ownership because when it is within the memory of man it is dependent upon title. For, if title is known by other means (of proof), then ownership having been established by the same (means), possession is not evidence either of ownership or of title. And if title is not known by other means, how can possession which is qualified by title be evidence?" (To this) the answer is as follows:—Even Possession which is accompanied by a title though proved by other means when uninterrupted creates ownership in course of time. A title though proved is not sufficient to create ownership in course of time, (if it be) without possession, as a gift or sale in the meanwhile might create a title to ownership. Thus the whole is unobjectionable.

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[1] Nârada I 91.

It has been said that possession is evidence (of ownership) when it is accompanied by title ; then (it may even be said that) title is evidence (of ownership) independently of possession. So the auther says:—

Yâjñavalkya Verse 27.- 2

In a title also there would be no force if there is no possession even for a short time.

Mitâksharâ—In (the case of) a title where possession even for a short time (**Bhuktiḥ**) does not exist (**No**), in that (*i. e.* that title) there is not full force (**Balaṃ**).

* Page 23.

This is the meaning intended. A (**Dâna**) gift is that where there is a cessation of one's ownership and the commencement of another's ownership. The commencement of another's ownership is secured if the other accepts it as his own and not otherwise. Acceptance, moreover, is threefold. Mental (**mânasaḥ**), Verbal (**Vâchikaḥ**), and Physical (**Kâyikascha**). Of these the *Mânasa* or mental is in the form of a (mental) resolution that 'it has become mine.' "The *Vâchika* or verbal is an objective[1] recognition of the thing (as one's own), with the utterance of the words "this has become mine." The *Kâyika* or physical is of many sorts *viz.* by actual receipt or by touching (the subject matter) &c. In this respect a rule has been laid down. "A deer-hide should be given by (means of touching) the tail; a cow by the tail, an elephant by the trunk; a horse similarly should be given by the hair and a maid by the head." **Âswalâyana** also says.—"The consent of sentient beings should be obtained; non-sentient beings and a maid should be touched,"

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[1] सविकल्पक is the same as सविशेषणक having reference to a particular condition or object.

There in the case of gold (*i. e.* money), clothes &c. all the three modes of acceptance are observed as physical acceptance becomes complete immdiately after the offering of the water.[1] In the case of land etc, however, a (complete) physical acceptance being impossible without the enjoyment of profits, the acceptance should be by possession (for) howsoever short a time (it may be;) otherwise a gift, or a sale does not become complete. Thus a title becomes weak if it is unaccompained by (actual) physical acceptance in the form of the enjoyment of profits, because there such a title *i. e.* one with possession is wanting. This[2] however, would be where the priority of time between the two is not known. When, however, the priority of time is known, a prior title alone will have force even if it is wanting in (the necessary) qualities.

Or again, it has been laid down that evidence is of three kinds *viz.* writing, witness and possession; it may be asked where all these exist together which of them would prevail and where ? So the answer that would naturally suggest itself is this—"Title is superior to possession, excepting where it (*i. e.* possession) has descended wn from a line of ancestors. In a title also there would be no force if there is no possession even for a short time." The meaning is this. In the case of the first acquirer title established by witnesses is even stronger than possession, unless there is a possession which had come down from a (successive) line of ancestors. Such possession moreover, coming down from a (successive) line of ancestors in the case of the fourth generation becomes stronger than a title established by a writing. While in the case of the intermediate generation, a title accompanied by possession even though short is superior to a title without possession. This very thing has been made clear by **Nârada** "The origin (of title) in the case of the first (acquirer) is gift, in the case of the intermediate (holders) possession with title and in the case of possession which is long and continued, (such) *possession is itself the* sole origin."

By the text "*Paśśyataḥ abruvataḥ* etc."[3] (while (he) sees does not object etc.), it has been laid down that after twenty years in the case of land and ten years in the case of money there would not be a recovery of profits. Thinking that in such a caset, it may be supposed that as with the recovery of profits so there would not even be the recovery of fine, the Author proceeds to expound the law as to fines by considering the generation (of the occupiers) as well as the means of proof. So the Author says:---

Yâjñavalkya Verse 28.

He who made the acquisition of a title if sued should prove it, (but) not his son, nor his (i. e. son's) son; (for) in their case possession has more force.

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[1] As distinguished from the land &c. in which case acceptance is not complete until profits are gathered in.

[2] For an exposition of this passage and its contest see the Bâlambhaṭṭi Sk. p. 45 ll. 4- 6.

[3] Verse II. 24p. 41. ll. 36-37 of Eng. Tr. above.

Mitâksharâ:—By him (**Yena**), the person by whom of land etc. the acquisition of a title (**âgamaḥ**) was made (**Kṛitaḥ**), that man if accosted in a suit (**abḥiyuktaḥ**) as to whence he acquired the land etc. should prove (**Uddharet**) *i. e.* establish it (**taṃ**) *i. e.* the title as *e. g.* through gift etc., by means of a writing and other means of proof. By this also it amounts to be laid down that the first acquirer is liable to be fined if he does not make out his title. His son (**tatsutaḥ**) *i. e.* the second, if sued need not prove title; but uninterrupted possession without protest and with notice. By this it has also been proved that there would be no fine to the second if he does not prove title, but if he does not prove a particular manner of possession. His son (**tatsutaḥ**) *i. e.* the third need not prove either title or any particular manner of possession, but simply possession handed down in a (successive) line (of ancestors). By this also it has been established that there would be fine for the third if he did not prove possession handed down in a line, and not if he do not prove title or a particular manner of possession. Here (**tatria**) *i. e.* in the case of the second and the third possession (**bḥuktiḥ**) alone has more force (**garîyasî**). There also the distinction to be noticed is that in the case of the second it has force while in the case of the third there is greater force. The loss of the thing takes place equally in all the three, that is, the purport is that if title is not proved the distinction has a reference to the fine only. **Hârîta** also has said—"He, by whom an acquisition has been made, is liable to punishment if he does not prove it, and not his son or his (*i. e.* son's) son; but even these lose the thing possessed."

* PAGE 24.

By the (qualifying) text "excepting where it has come down from a line of ancestors" it has been laid down that possession may be (accepted as) evidence when it extends beyond the memory of man and in which case it is independent of the knowledge of title. The Author mentions an exception to this.

Yâjñavalkya Verse 29.

If a person, happen to die while a suit was filed against him his (legal) heir should prove it. In such a case possession is no evidence (i. e. of ownership) if it is not proved to be accompanied with title.

Mitâksharâ:—When, however, a trespasser etc. while a suit had been filed againt him (**Abhiyuktaḥ**), and before the suit was decided, happen to die (**paretaḥ**) *i. e.* happen to depart to the next world, then his heir (**tasya ṛikthî**) *e. g.* sons etc. should prove (**uddharet**) it (**tam**) *i. e.* the title since in such a case (**tatra**) *i. e.* in that suit possession (**bhuktiḥ**) without title, even though established by witness etc., is no evidence. Because by reason of a suit against the last holder possession ceased (to have any value as evidence). It has also been said by

Nârada[1] "Of the litigant who has died while a suit was filed against him, the son should prove the title, (since) the point (at issue) will not be established by (mere) possession."

It has been established that where a suit remains undecided and a litigant dies the (proceeding of the) suit does not stop (there). In some cases, however, where a suit is decided or a litigant is living, a suit is retried, and in some cases it is not retried; for a determination of the rule (applicable) in these cases, the Author mentions the comparative superiority and inferiority of those who decide disputes :—

Yâjnavalkya Verse 30.

In matters of legal proceedings between men, officers appointed by the King, the Pûgas, the S'reṇis and the Kulas, (each of these) preceding should be considered to be in the superior order of priority (specified here.)

Mitâksharâ :—**Nṛipeṇa** (*by the king*) *i. e.* by the ruler **Adhikṛitâṇ** *appointed* for trying and deciding legal proceedings. Referred to in the text[2] "A king should select as his councillors, &c." and **Pugaḥ** corporations *i. e.* of men (though) belonging to different castes and (following) different occupations, but residents of the same place *e. g.* of a city, town &c. **Sreṇayaḥ**—trade guilds of persons earning their livelihood by the same (kind of) labour whether belonging to different castes or to the same caste *e. g.* of the dealers in the cattle, beetle, the weaver and the currier. **Kulâni**, groups of, caste-people, relatives or cognates.

Of these four *i. e.* officers appointed by the King &c. **Purvaṃ** (*in the order of priority*) whoever has been mentioned first, those in order should be considered (**Jñeyaṃ**) *i. e.* regarded as superior (**Balavat**) *i. e.* more powerful. Between men (**Nṛiṇâṃ**) *i. e.* men engaged in litigation. In the matter of legal proceedings (**Vyawahârawidhau**) in the matter of trying and deciding a dispute.

This is the meaning. In the caseof a suit decided by officers appointed by the king, there would be no fresh hearing before *pûgas* &c on the ground of a wrong (exercise of) judgment, even if the defeated party is dissatisfied. Similarly even in the (case of the) suit decided by *pûga* there would be no appeal to *S'reṇis* &c. So on a decision by the *S'reṇi* there can be no resort to the *kula*. But from the decision of the *Kula* one may go to the *S'reṇi* &c; from the decison of the *S'reṇi* to the *pûga* and from the judgment of the *pûga* to the offiicers appointed by the King.

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[1] Ch. I. 93.

[2] See Yâjñ. II. 2. p. 2.

Nârada,[1] however, has said that there would be an appeal to the king even from a decision of the officers appointed by the king "*Kulas*, *S'reṇis*, *pûgâs*,[2] an officer appointed (by the king), and the king (himself) are invested with the power of deciding law suits; and of these, each succeeding one is superior to the one preceding him in order."

In such a case, moreover, where a party appeals to the king, if in a trial with a wager before the king and his councillors together with the officers before whom it was first tried, the party complaining of impartiality is defeated, he should be fined. But if he succeeds, then the officers appointed as judges should be fined.

It has been said that a suit decided by an inferior tribunal may be retried, and that decided by the superior is not reopened. Now the Author mentions cases where even a suit decided by the superior tribunal is reopened.

Yâjñavalkya Verse 31.

Transactions brought about by force or fraud should be upset, so also those entered into by women, at night, in the interior of the house, outside, or with the enemies.

* PAGE 25.

Mitâksharâ:— **Balena** (by force) by compulsion. **Upâdhinâ** (by fraud) such as threats etc., **Vinirvṛittân** (brought about) produced. **Vyawahârânniwartayet** *transactions should be upset.* Similarly (**Stribhiṛ**) by women (**Naktam**) at night even if by others than women. **Antarâgâre** *in the interior or apartment of the house.* **Bahir** outside the village. **Satrubhischa Kritân** as also those transactions entered into with the enemies, should be reopened. This is the construction.

Yâjñavalkya Verse 32.

A transaction[3] entered into by a person (who is) intoxicated, or insane, or afflicted with disease, by one in distress or by a minor, or one frightened, or the like will not be upheld; as also that entered into by one who has no connection.

Mitâksharâ:—Moreover, **Mattaḥ** (*intoxicated*) by some intoxicant. **Unmattaḥ**[4] (*insane*) affected by insanity caused by either of the five causes *viz.*

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[1] Introduction Verse 7.

[2] Ganas (V. L.)

[3] A व्यवहार may better be rendered as "a transaction" in this contest. The general conditions in this and the last verse apply as well to suits as to other transactions.

[4] An Unmâda has been thus defined:—"मदयन्त्युद्धता दोषा यस्मादुन्मादमाश्रिताः। मानसोऽयमतो व्याधिरुन्माद इति कीर्तितः" *Susruta*.

(disorder, arising) from *vâta*[1] (wind) *Pitta* (bile) *S'leshma* (phlegmatic humour) or a combination of these or by an evil demon or by (the influence of) a plant. **Ârtaḥ** (*afflicated*) with a disease etc. **Vyasnam** (*distress*) is the pain caused by the separation from the loved and acquisition of the undesired and a **vyasanî** (*destressed*), is one who is affected by it. **Bâlaḥ** (*a minor*) incapacitated for (entering into) any transaction. **Bhîtaḥ** (*frightened*) by the enemies. By the use of the term **A'di** is also indicated one who is inimical to the city[2] or to the nation. As **Manu**[3] has said—" Men conversant with law and religion have laid down that a suit which is (instituted by one who is) opposed to the City or the nation, or a suit decided by the king is unacceptable as a plaint." By these **Yojitaḥ** (*entered into*) brought about. **Vyawahâro na Siddhyati**-a transaction will not be upheld. Also a transaction entered into by one having no connection or by one who was not appointed as an agent, will not succeed. This is the construction.

As to what, however, has been said[4] *viz.*—"A suit will not lie between a preceptor and a pupil, a father and a son, between the husband and the wife or between a master and a servant, even if they are at conflict with each other." even that is not to be taken as amounting to (lay down) an absolute exclusion of a suit between a preceptor and a pupil and such others, as a suit has been ordained (to lie) even between them. For **Gautama**[5] has said: " A pupil shall not be punished corporally. If (this course is) impossible, (he may be corrected) either with a thin rope or a thin cane. If (the preceptor) strikes (the pupil) with any other (instrument) he shall be punished by the king." As **Manu** also has said " In no case should the punishment be upon the head." When (however) the preceptor under the excitement of anger, while punishing, strikes on the head and if the pupil (who was) thus injured in a way, which is a violation of the (laws of) Smriti and usage, complains to the king then a cause of action (for a trial) does certainly arise &c.

Similarly, under the text " Land which was acquired by the grandfather &c." the ownership of father and son being equal over land &c., if the father destroys by means of sale &c. (the title to) the land &c. which was acquired by the grandfather, and if the son resorts to an officer of justice, then there would certainly arise a suit even between a father and a son. Likewise, under the text "A husband is not liable to make good the property of his wife, which was involuntarily taken by him in a famine, or for the performance of a (religious) duty, or during illness or while under restraint" if the husband having spent away the wife's property (even) when there was no famine &c., does not pay back when asked for even when possessing wealth, then a suit is certainly admissible even between a husband and a wife. So also the legal relations between a slave of maintenance and the master will[1] be mentioned later on and having regard to the text of **Nârada**[2] *viz.* "Should any one of these however, save his master when his life is in peril, he shall be released from slavery and shall take a son's share (of his master's wealth)." Even in the case of a slave by birth, who would avoid a suit against a master, if the slave is not manumitted and not given a son's share. Therefore the purport of the verse beginning with "Between the preceptor and the pupil" &c. is that as a dispute with a preceptor &c. will bear no good result in this world or the next so the pupils and others should in the first place be induced away by the king in company with the assessors. If, however, the parties press hard, a suit has to be commenced even (when instituted) by the pupil &c.

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[1] Recognised by the Aryan Medical System as the three principle humors of the human body, every disorder of the body or of the mind being traceable to a disorder of one or more of these or of all the three combined in which case it is called a *Sannipâta* (सान्निपात).

[2] *i. e.* opposed to the municipal, local or general interests.

[3] II. 42-44.

[4] See further on Yâjña II. 121.

[5] Yâjña II. 148.

Although the text of **Nârada** says that "Men conversant with law lay down that disputes between one and many, with women, and with servants are inadmissible as a suit;" still having regard to the text.[3] "He who robs the wealth of the villagers or transgresses any established usage &c." and the text[4] "When one is assulted by many &c." even a suit between one and many appears to be ordained, when they have a common cause of action. It should be noticed that a suit between one and many simultaneously will not lie when the many have different causes of action.

As for the expression 'with women' (*Strìnâṃ*), in their case also a suit certainly is allowed with the female of a cowherd, a vintner and such others inasmuch as these women possess independence. The text is to be explained that a suit between women other than these—*i. e.* women of good family whose husbands are living shall not be admissible on account of their dependence. "*With servants.*" This text also should be construed to mean that on account of the dependence of servants upon the masters, even in a dispute relating to his (servant's) own interests a suit should be allowed only with the master's sanction and not otherwise.

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[1] Yâjña II. 182.
[2] V. 30.
[3] Yâjña II. 187.
[4] Yâjña. II. 221.

* PAGE 26.

After mentioning suits that are liable to be reversed the Author indicates the kind of property which may be restored.

Yâjñavalkya Verse 33.

Lost Wealth when (subsequently) recovered should be given by the king to the owner; if (however) he the (claimant) do not indentify it by (supplying) marks (of identification) he is liable to an equal (amount of) fine.

Mitâksharâ:—Lost wealth **(Pranashtam)** such as gold &c., what was recovered **(adhigatam)** by the revenue or police officers &c. and offered to the king, (that wealth) should be given by the king to the owner, if the owner indentify it by (supplying) marks of identification such as the quality, quantity &c. If he do not identify then he should be fined in an equal amount, for setting up an untrue claim. This refutes the presumption of ownership which may arise on account of *adhigama* (finding) being recognised as one of the causes giving rise to ownership.[1]

Here, moreover, further[2] on the Author lays down the period of time. *viz.* "What was brought in by the Revenue Officer or the Officers of police as property lost and recovered, the owner may take away within a year; thereafter the king shall take it away". **Manu**[3], moreover, has laid down three years as the period. "Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years; within the period of three years the owner may claim it, thereafter the king shall take it." There it shall necessarily be preserved for three years. If the owner comes within a year the whole should be returned (to him). Where, however, he returns after more than a year, in that case after deducting some portion as a preservation charge, the remainder should be made over to the owner. As has been said[4] "Then the king bearing in mind the law among good men, may take one-sixth part of the property lost and afterwards recovered, or one-tenth or at least one-twelth." In such a case in the first year the whole should be given. But in the second after deducting a twelfth portion, in the third a tenth and a sixth in the fourth and in the following years, the remainder should be restored (to the owner).

A fourth of the Royal share should be given to the finder when, however, the owner does not turn up a fourth of the entire property should be given to the finder and the remainder may be taken by the king. **Gautama**[1] similarly has said " If lost property, the owner of which is not known, is recovered it should be announced to the king. The king should cause a proclamation to be made and preserve it for one year. Afterwards one-fourth (goes) to the finder, (and) the remainder to the king." Here by the use of the word *'a year,'* the singular number is not intended vide the text.[2] "The king should cause it to be kept as a deposit for three years." And even the text[2] " Thereafter the king shall take it " amounts only to a permission to dispose (it) of after three years if the owner does not turn up. Where, however, the owner appears after that (period), even if the property is disposed of, the king should deduct his due and pay (to the owner) an equivalent (amount). This is with reference to gold &c. As regards cows etc. the author states (the law) further on[3] (in the text). " The owner should pay (four) paṇas if the animal has an entire hoof, etc."

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[1] See *e. g.* Gautama.
[2] Yâjña II. 173.
[3] Ch. VIII. 30
[4] Manu Ch. VIII. 33.

After laying down the law regarding gold &c. as to property lost and recovered on the roads or from the toll houses where it lay scattered, now the Author states the law regarding the recovery of gold &c. which had long been burried in the land, and which last is known as a *Nidhi* (or treasure-trove.)

Yâjñavalkya Verses 34 and 35.

The king having found a treasure-trove should give half to the twice-born. But a learned (brâhman) finding (a treasure-trove) may keep the whole as he is the lord of all (34).

If treesure-trove is found by any other, the king should give him[4] a sixth part. If (however) the information is not given (by the finder) and he is found out, the finder should be made to pay a fine. (35)

Acquisition of a treasure-trove

Mitâksharâ:—The king having found a treasure-trove as already defined, half should be given to the Brâhmaṇs and the remainder thrown into the treasury. If, however, a Bráhmaṇa a find treasure-trove and he be learned, *i. e.* accomplished by learning and study and well-behaved then he should take the whole; since he is the lord of the whole world.

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[1] X. 36-38 The proper reading is प्रनष्टमस्वामिकं अभिगम्य राज्ञे प्रब्रूयुः । विख्याप्य राज्ञा संवत्सरस्थ &c. This is the reading in the original of Gautama.

[2] *i. e.* Manu VIII. 30.

[3] Yâjña II. 174.

[4] The translation as given above is in accordance with the Mitâksharâ.

If, however, the treasure-trove is found by any other (**itareṇa**) than either the king or a learned Brâhmaṇa as *e. g.* by a Brâhmaṇa who is not learned, or by a Kshatriya or such another, the king should give a sixth of it to the finder and himself take the remainder of the treasure-trove. As says **Vasishṭha** "A king who finds property the owner of which is not known should take it; he should give a sixth part to the finder." **Gautama**[1] also "Treasure-trove is the property of the king; not (however) that which is found by a learned Brâhmaṇa. Some declare, that even a non-Brâhmaṇa finder who announces (to the king) shall obtain one-sixth."

* PAGE 27.

The past-participle *anivedita* is (used) in the active voice. He who has not given information and who has been found out *i. e.* who has been found out as not having given information even to the king. Whoever, having found a treasure-trove, did not inform the king and was found out by the king, should be made to pay the entire treasure found and also a fine according to (his) capacity.

If, however, the owner of the treasure-trove appears afterwards and establishes his ownership by specifying the amount of the rupees &c. then the king should give him the treasure, (after) taking for himself a sixth or a twelfth part. As says **Manu**[2]–"From that man who shall truly say with respect to a treasure-trove, 'This belongs to me,' the king may take one-sixth or one-twelfth part." The choice as to the (particular) portion is to be determined by reference to the class (to which the party belongs), the time (what had intervened) &c.

The Author mentions (the rule) about property taken away by robbers.

Yâjñavalkya Verse 36

The king should pay the wealth taken away by the robbers (and recovered by him from them) to the people of his country; aud if he do not pay he incurs the sin of the robbed as well as of the robbers.

Mitâksharâ:—(**Chouraiḥ ṛhitam**) *taken away by the robbers*, and conquered back from them. **Jânapadâya**—to the inhabitants of his country. Whoseosever that wealth be to him should it be given by the King. If (hi *i. e.* since if, he do not pay (**adadat**) whoseso (**yasya**) that robbed wealth may be, he incurs the sin of him (**tasya**), of him *i. e.* of the robber. As says **Manu**,[3] "Property stolen by thieves must be restored by the king to (men of) all classes (*varṇa*); a king who uses such (property) for

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1. X. 43-45.
2. Ch. VIII. 35.
3. Ch. VIII 40.

himself incurs the sin of a thief. If after recovering from the possession of the thieves he enjoys it himself then he incurs the sin of a thief.[1] If, however, he neglects the (recovery of) property stolen by thieves then he incurs the sin[1] of a citizen. If after trying to recover property stolen by the thief, he is not able to recover it, then in that case he should pay as much amount from his treasury. As says **Gautama**[2] "Having recovered property stolen by thieves, he shall return it to the owner. Or (if the property is not recovered) he should pay (its value) out of his own treasury." And also, **Krishṇadwaipâyana**:—"If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable."

Here ends the chapter on Special rules of Procedure.

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[1] These expressions require an explanations. They supply a good illustration of the terse style (मिताक्षरा) of the Author: In the first expression चौरस्य किल्बिषमाप्नोति, what is intended to convey to the reader is that he incurs the same responsibility and criminal liability as a thief does. While the expression जानपदस्य किल्बिषमाप्नोति 'incurs the sin of a citizen,' means that he incurs the same responsibility which a citizen does by not assisting or neglecting the recovery of robbed property.

[2] X 46-47.

Chapter III.

Recovery of Debts.

Sevenfold division of the Chapter on recovery of debts.

After expounding the 'Rules of Procedure' in general and particular cases, the Author now expounds the Chapter on 'Recovery of Debts' the first of the eighteen titles of law, beginning with the text. "An eightieth part is the interest"[1] &c., and ending with the text "The pledge shall be (allowed to be) redeemed, after double the principal has been received out of the produce."[2]

This title of "Recovery of Debts" has seven points (for consideration). The *kind of debt* which should be paid, the one which should not be paid, by what person should be paid *i. e.* by one holding a particular capacity, at what particular *time* to be paid, and in what way to be paid–in all, five points for the debtor; and for the creditor two *viz.*, the mode of advancing a loan as also the mode of recovering it. This moreover has been made clear by **Nârada**[3] *viz.* "Which debt must be paid, and which may not be paid, by whom, where and in what way to be paid, and the rules of advancing and recovering of (loans) are said to make up the (title) 'Recovery of Debts"

Of these the Author states the rule regarding the advance (of a loan) by the creditor, as it is the first of all others (*i. e.* points of inquiry).

Yâjñavalkya Verse 37.

An eightieth part (of the principal) is the interest (allowed) every month when the debt is (secured) by a pledge. In other cases it may be two, three, four or five per cent respectively according to the order and class (of the debtor).

*PAGE 28.

Mitâksharâ:—*Every month* (**mâsi mâsi**) *i. e.*—month by month. **Bandhaka** is that which is deposited as a security; *i. e.* pledge. That which is (accompanied) by a pledge is called a transaction with a pledge. In such a secured transaction, the interest on money advanced would be one-eightieth part (of the principal), according to law. *In other cases* (**anyathâ**) *i. e.* in a transaction without a pledge. *According to the order* (**kramena**) *of the classes* (**varṇânâm**) *i. e.* of the Brâhmaṇs and others. *Two, three, four or five* (**Dwitri-chatuḥ-panchakam**) per cent is according to law. In the case of a *Brâhmaṇa* debtor two per cent, in a *Kshatriya* three, in a *Vais'ya* four and in a *S'udra*

In a transaction with a pledge an eightenth part is the interest.

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[1] Verse 37.

[2] Verse 65.

[3] Ch. I. 1.

five and (this) every month. Two, or three, or four or five. (make up the compound word) two-three-four-five. A hundred in which such an interest is given is "a hundred with two-three-four-five." As per the following rules of grammar *viz.* "The[1] affixes, mentioned above[2], have also the sense of an interest, or a rent, or a profit, or a tax or a bribe given thereby or in that", "The affiix *Kaṇ* (कन्)[3] comes after a numeral when it does not end with ति or शत्".[4] and the rule to be observed here is the one stated in the Grammatical *Sûtra* I. 1-72 *viz.* "An[5] injunction which is made with regard to a particular attribute, applies to words having that attribute at the end as well as to that attribute itself."[6]

"Interest upon interest is (called) compound interest; it is (called) *Kâlikâ* when it is (payable) per month; it is *Kâritâ* when it is fixed according to the wish (of the parties); it is *Kâyikâ* when it is in the form of bodily labour" (the slipulation that) 'the interest in this will be taken every month' is (an instance of) a *Kâlikâ*." This very (species of) interest becomes *Kâyikâ* when it is receivable per day and the period is divided by the calculation of days. Moreover **Nârada**[7] after stating; that "In the *Sâstras* interest is declared fourfold *viz.* *Kâyikâ*; *Kâlikâ* (periodical interest) another called *Kârikâ* (stipulated interest) as also the compound interest (*chakra vṛiddhiḥ*)" has said:—"Interest[8] at the rate of one *Paṇa* or quarter of a *Paṇa* payable constantly[9]

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1. Pâṇini 5-1-47.

2. *i. e.* Pânini V. I-17-46.

3. *e. g.* in पंचकम्, the कम् termination.

4. The word आर्हात् (see V. I. 63) is to be read into the *Sûtra*, so that the whole *sûtra* would read by adding, to the portion given above, the following *viz:*—"The sense of the affix being that taught hereafter upto V. 1. 63."

5. This *i. e.* the तदन्तविधि (Pân. I. I. 72) is a rule of interpretation. When a rule is made with regard to a particular attribute or letter, it also means words having those attributes or letters at their end. Thus under the rule अचो यत् (III. I. 97.)—"The affix यत् comes after a root that ends in a vowel" roots ending in vowels as well as roots consisting of a single vowel are included.

6. For a clear understanding of the bearing of these rules the upon text, mark the following observations. The compound word द्वित्रिचतुःपञ्चन् has been explained and solved as द्वौ वा त्रयो वा &c. (Sk. page 28 lines 4-5). For this the authority is तदस्मिन् etc. (V. I. 47) under which rule the affix is added to a word in the first case (तद्) in construction. The sense of the affix is that of a locative (अस्मिन्). Then the कन् ending in द्वित्रिचतुःपञ्चकं is explained by the rule संख्यायाः &c. (V. I. 22.). And lastly by the तदन्तविधि the application of the first rule is extended to all the members of the compound and thus is brought out the meaning of this compound word as explained in line on 6 page 28.

7. Ch. I. 102-104.

8. स्वस्वपणपादादिकात्क्रमात् is the reading in Dr. Jolly's edition.

9. शश्वत् (Śaśvat—) has the force of constant repetition. Heer it may even be rendered as "every day" (see line 9.) कायाविरोधिनी—(Kâyâvirodhinî)—The translation adopted here is in accordance with the gloss of Bâlambhaṭṭi (see Bâlam. Sk. p. 54 l. 14-15). Bṛihaspati & Vyâsa (see Saced Books of the East &c. **XXXIII** p. 67 note.).

Dr. Jolly, however, translates it as—"Without diminishing the principal" and the translation appears to be based on the following gloss by Asahâya, "अथ कायोच्यते। ......द्रव्यपिण्डो द्रव्यकायः तस्याविरोधिनी मूलद्रव्यकायस्याविनाशिनी।"

and without detriment to the physical health is denoted *Kâyikâ* interest. That which runs by the month is termed (periodical) *Kâlikâ* interest. That interest is (stipulated) *Kâritâ* interest which has been promised by the debtor himself. Interest upon interest is called compound interest (*Chakravṛiddhiḥ*)."

The Author mentions other varieties of interest by reference to particular (classes of) debtors.

Yâjñavalkya Verse 38 (1.)

Persons (usually) travelling through forests should pay ten per cent and those who travel by sea twenty per cent.

Mitâksharâ:—*Kântâra* means a forest; those who go there, are **(Kântâragâḥ)** *persons travelling through forests*. Those who borrow money by interest and enter dense forests which involves[1] danger to life and property should pay ten per cent and those who go to the sea **(Samudragâḥ)** twenty per cent, also per month. The meaning is this. The creditor should take ten per cent from those who go to the forests and twenty per cent from those who go to the sea, as there is a danger of the loss of the principal also.

Now the Author describes stipulated interest (Kâritâ).

Yâjñvalkya Verse 38.

Or all should pay what they agree to among all classes.

Mitâksharâ:—*Or all* **(sarve vâ)** Brâhmaṇs and others, debtors whether secured or unsecured *should pay interest* promised by them **(swakṛitâm)**—*what they agree to*—*among all classes* **(sarvâsu Jâtishu)** Sometimes interest is payable even when not stipulated for. As says **Nârada**[2] " Unless there be an agreement to that effect no interest shall ever be charged on friendly loans. Interest (on such loans) accrues, (however) after the lapse of half a year even if there be no agreement to that effect."

Kâtyâyana has laid down a rule applicable to one who goes to another country after taking a loan for use thus:—"If one after obtaining a loan for use without returning it goes to foreign lands, that loan of his will be charged with interest after the lapse of a year. For him, moreover, who obtains a loan for use and goes to a foreign region without returning it, even when he was asked, the same Sage has laid down the rule *viz.* "If, one goes out to a foreign region without returning a loan which he had obtained and which was damanded back, that loan becomes chargeable with interest after the laspe of three months."

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[1] Lit. which creates an apprehension about the destruction of life and property.

[2] Ch. I. 108.

He also, who while remaining in one's own country, does not return a loan for use when asked for, should be made to pay interest by the king from the date of demand. As has been said, "He, however, who while remaining in one's own land, does not return a loan for use when asked for should be made to pay interest from that time, even though it was not stipulated and he be unwilling."

Nârada[1] has laid down an exception to the unstipulated interest, *viz.* "The price of a commodity, wages,[2] a deposit, a fine which had been fixed, a gift without a consideration, a gambling debt, none of these bear interest unless specially provided for." **(avivakshitah)** *Unless* specially provided for *i. e.* unless stipulated for.

* Page 29.

Now the Author mentions special kinds of interest by reference to perticular things. The interest on the females of beasts is their progeny only.

Yâjñavalkya Verse 39 (first quarter.)

In the case of female beasts the interest is their progeny.

Mitâksharâ:—Of the females of beasts progeny alone **(santatireva)** is the interest. Such a transaction would be possible in the case of one who is unable to maintain the female beasts and who wishes them to be well-fed and to bear progeny. The creditor will have the milk and labour.

When something is given as a loan and the loan has remained over for a long time even without recovering any interest, what is the maximum limit for the accumulation of interest in several kinds of properties? (Anticipating this question) the Author proceeds:—

Yâjñavalkya Verse (39.)

The utmost limit for (the accumulation of) interest is eight-fold in the case of a fluid, and fourfold, threefold and twofold in the case of cloth, grain and gold respectively (of the principal loan advanced).

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[1] Introd. II. 36.

[2] भृति, is a better and correct reading. The reading in the print *viz.* भृति is not correct.

Accumulation in the Case of fluids &c.

Mitâksharâ:—In the case of a fluid (**rasasya**) *i. e.* in the case of oil, ghee &c. upon which no interest has been received, and the loan has remained standing for a long time, the interest as agreed to by the parties would be accumulating—such accumulation would be eightfold. *Utmost limit* (**parâ**) *i. e.* it does not accumulate beyond that. Similarly of cloth, grain and gold (**wastra-dhânya–hiraṇyânâm**) the utmost accumulation would respectively be fourfold, threefold and twofold.

Vasishtha,[1] however, has mentioned a threefold increase in the case of a fluid—" Gold (taking) double (its value on repayment and) grain trebling (the original price). (The case of) fluids[2] has been explained by (the rule regarding) grain, as well as (the case of) flowers, roots and fruit. In the case of these three things which are sold by weight the increase will be eightfold."

Manu[3] on the other hand, has mentioned a fivefold increase in the case of grain and also flowers, roots and fruits: " On grain, fruit, wool or hair, (and) beasts of burden it does not increase more than five times (the original quantity)." *Grain* (sadaḥ) the produce of the field, such as flowers, roots, fruits &c; *wool* or *hair* (lavaḥ) the wool of a goat, the hair of the *Chamari* Cow &c. *Beast of burden* (wâhyaḥ)—the ox, horse &c. *i.e.* the accumulation of interest in the case of grain, fruit, wool or hair and beasts of burden does not extend beyond a fivefold (of the principal). There too, the rule should be applied after considering the capacity of the debtor as well as the state of things at the time, such as famine &c.

This (rule) moreover is to be understood as applicable in the case of one transaction and one payment. If there are separate transactions with different persons, or even if the person is the same but there are different transactions on more than one occasion, gold &c. would indeed increase as before even beyond the twofold and other limits. And even in a single transaction, when the interest is recovered daily, monthly or every year, and thus it is not[4] possible that the amount payable by the debtor might become twofold, the amount as made up of the interest recovered before, does certainly increase beyond (the) twofold (limit). As says **Manu**[5] " In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal). " " Recovered at one time " is also another reading. *Kusîda* is money utilised for accumulation. Increase of that is *Kusîda–Vṛiddhiḥ;* (such an increase) does not exceed *i. e.* does not rise beyond the double, if paid at one time *i. e.* lent at one time. It exceeds beyond the double when the dealings are with different persons and give rise to separate transactions.

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[1] Ch. II. 44-47.

[2] Dr. Buhler translates रसाः (*Rasaḥ*) as flourishing substances.

[3] Ch. VIII. 151.

[4] Read द्वैगुण्यासंभवात् for द्वैगुण्यसंभवात् l. 20 page 29 see Bâlambhaṭṭi Sk. P. 57. L. 1.

[5] Ch. VIII. 15.

In the case where the reading is, "recovered once", it should be explained to mean that the interest would exceed the double when recovered in instalments, from the debtor every day, every month or every year. Moreover it has even been said by **Gautâma**[1]:—"If in a transaction the loan remains outstanding for a long time, the principal may be doubled." (Here) by the use of the singular number in "a transaction" (*prayogasya*) an increase beyond the double appears to be intended in the case where the transactions are different. By the use of the expression " outstanding for a long time " (*chirasthâna*) an increase beyond the double has been indicated in the case where the interest has been recovered in small quantities.

Rules regarding loan transactions have been laid down (above). Now follow the rules regarding the recovery of property advanced as a loan.

Yâjñavalkya Verse 40.

One (a creditor) would not be blamed by the king for trying to recover an acknowledged debt; and if the debtor complain to the king while the debt is being recovered from him, he should be fined and made to pay (back) the loan.

Mitâksharâ:—*Acknowledged* (**prapannaṃ**) *i. e.* money admitted by the debtor, or proved by means of witnesses &c. *Trying to recover* (**sâdhayan**) *i. e.* a creditor recovering by *Dharma* and such other means *will not be blamed by the king* (**nripaterna vâchchyaḥ**)—*i. e.* will not be prevented.

The Dharma and other means have been pointed out by **Manu**:[2]

> " By moral suasion, by a suit at law, by deceit, or by starvation[3] a creditor may recover property lost, and fifthly also by force".

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[1] Ch. XII. 31.

[2] Ch. VIII. 49.

[3] आचरितेन च is another reading. Dr. Buhler translates it as a customary proceeding, which he describes as—killing one's (?) wife, children, and cattle, and sitting at the debtor's door, or by the creditor's starving himself to death. This is based on the following text of Brihaspati cited by *Kulluka.*

दारपुत्रपशून्हत्वा कृत्वा द्वारोपवेशनम् । यत्रार्थी दाप्यतेऽर्थं स्वं तदाचरितमुच्यते ।

It will be clear that this is the process of sitting Dharaṇ or making the Trâgâ and it is doubtful how far it deserves the exalted name of "A customary procedure." In this view अचारितेन =अभोजनेन is a better and more expressive reading.

Means of recovering a loan advanced.

By moral suasion (Dharma) by plain and affectionate words. *By a suit at law* (vyawahâreṇa) by such means as witnesses, documents &c. *By deciet* (**chhalena**)–by taking ornaments &c. under the pretext of some ceremonial celebrations &c. *By starvation* (**acharitena**)—by abstaining from meals. By the fifth means *i. e.* by force—by imprisonment with iron fetters &c. (*i. e.* to say) money advanced for accumulation (of interest) should be recovered to oneself by these means.

By saying "For trying to recover an acknowledged debt" the Author indicates that he should be prevented by the king, from recovering a debt which has not been acknowledged by the debtor. This very thing has been made clear by **Kâtyâyana** thus: "A creditor who harasses a debtor who is demanding a trial, shall forfeit his claim and pay an equal fine".

Where, however, a claim has been (made to be) admitted by *Dharma* and other means, and if when the amount is being demanded or recovered the debtor goes to the king and complains against the creditor for trying to recover his due, that debtor becomes liable to be punished with a fine according to his capacity; and, moreover, he is made to pay the amount to the creditor. The modes of compulsion by the king have been thus indicated[1]—" The king should make a Brâhmaṇa pay the creditor only by gentle persuasion, others according to the usage of the country. The wicked should be made to pay by compulsion. An heir and a relative also should be made to pay by recourse to deceitful tricks". The text[2] " If the debtor complain to the king while the debt is being recovered", should also be understood as a counter-illustration of the text " In a way which is a violation of the (law of) Smritis and usage."[3]

When several creditors appear simultaneously, and the debtor is one, in what order should he be made to pay by the king ? (Anticipating this question) the Author says:—

Yâjñavalkya Verse 41.

A debtor should be made to pay his creditors in the order of the receipt of the loans; after paying off a Brâhmaṇa (creditor), then alone the ruler of men (*should be paid*).

Mitâksharâ:—When the creditors are of the same class, the debtor should be made to pay, by the king, the creditors in the same order in which the loans were taken. When, however (the creditors) belong to different classes, the Brâhmans (should be paid) first and then the rest in order.

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[1] By Kâtyâyana

[2] Yâjñ. II. 40.

[3] Yâjñ. II. 5. (See p. ll. 11-12.)

When, however, a creditor is weak and unable to recover an acknowledged claim by Dharma and such other means, and the amount is recovered (for him) by the king, in such a case the Author mentions a fine for the debtor and payment of costs by the creditor.

Yâjñavalkya Verse 42.

A debtor should be made to pay, by the king to himself ten per cent of the amount recovered; and a creditor who has won his case should be made to pay five per cent.

Mitâksharâ:—*A debtor* (adhamarṇikaḥ) by the king (râjnâ) from the amount acknowledged and *recovered* (sâdhitât) ten per cent (das'akam s'atam) *should be made to pay* (dâpyaḥ). The king should take from the debtor in the shape of fine, a tenth portion of the amount recovered from the acknowledged amount. This is the import.

A creditor, however, *who has won his case* (prâptârthaḥ) should be made to pay (dâpyâḥ) *five per cent* (panchakam s'atam) in the form of costs. The meaning is that the king should take a twentieth portion of the amount recovered by way of costs. In the case of a realisation where the debt is not acknowledged, the distribution of fine has been indicated in the text.[1] "Where, upon a denial (by the defendant) a claim is proved &c."

The rule as to a wealthy debtor has been mentioned. Now the Author mentions a rule in the case when the debtor is poor.

Yâjñavalkya Verse 43.

An insolvent debtor of a lower class should be made to work for his debt; a Brâhmaṇa insolvent, however, should be made to pay by instalments according to his ability.

About a pauper debtor.

Mitâksharâ:—A Brâhmaṇa creditor and others (belonging to a superior class) should, for a debt (ṛinartham) *i. e.* for the discharge of a debt, cause debtors of a lower class such as the Kshatriya and others who have become insolvent

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[1] Yâjñ. 11. 11. (See p. 25-1. 14.)

(parikshiṇam) *i. e.* moneyless, to do their usual work (**karma**) *i. e.* agreeably to (the usage) of their caste and without detriment to (the interest of) their family. A Brâhmaṇa, however, if insolvent *i. e.* moneyless should be made to pay by instalments (s'anaiḥ s'anaiḥ) according to his ability (**yathodayam**) *i. e.* according to the posibilities (of the case.)

* PAGE 31.

Here the reference to a lower class is indicative also of an equal class; and therefore a debtor of an equal class also, if insolvent, should be made to do work which is proper for him. The mention of a Brâhmaṇa is also indicative of the superior class, and therefore Kshatriyas and others though insolvent should be made to pay their Vaisya and other creditors (of a lower class), by instalments and according to their ablity. This very thing has been made clear by **Manu**,[1] "Even by personal labour shall the debtor make good (what he owes) to his creditor, if he be of the same caste or of a lower one; but a (debtor) of a higher caste shall pay it gradually." The meaning is that the debtor should by his conduct so transform himself into a position that the distinction of a debtor and creditor would become extinct.

Yâjñavalkya Verse 44.

When a creditor does not accept back an amount lent when tendered, and if the same is deposited with a third prson, it will not carry interest from that time.

Money deposited a third person bears on interest.

Mitâksharâ:—Moreover, an amount (**dhanam**) lent (**prayuktam**) at interest being tenderd (**dîyamânam**) by the debtor, if the creditor, out of greed for interest, does not accept (**na griṇhâti**), and if the same is deposited in the hands of a third person by the debtor then from that time (**tataḥ**) *i. e.* after the deposit, it does not bear interest (**na vardhate**). If, however, he does not give when demanded, then even if deposited it carries interest as before.

Now the Author states *when* and to *whom* should a debt that ought to be paid, be paid.

Yâjñavalkya Verse 45.

A debt which has been incurred for family purposes by the undivided members should be paid by the coparceners when the head of the family[2] is either dead or has gone abroad.

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1. Ch. VIII. 177.
2. The *potter families* would be an appropriate rendering of a Kuṭumbin.

A debt incurred for family purposes must be paid.

Mitâksharâ:—A debt which has been incurred for family purposes (**kutumbârtham**), either by the many undivided (**avibhaktaiḥ**) members or by each one separately, the head of the family (**kutumbî**) should pay. When he is either dead (**prete**) or has gone abroad (**proshite**), his coparceners (**ṛikthinaḥ**) should pay (**Dadyuḥ**).

The Author mentions a counter-illustration to the rule as to by whom (a debt) should be paid.)

Yâjñavalkya Veres 46

A woman need not pay a debt incurred by her husband or son; nor a father that (incurred) by the son; nor a husband that of the wife, except when it is (contracted) for family purposes.

A debt that need not be paid.

Mitâksharâ:—A debt incurred by the husband (**patyâ**), the woman (**yoshit**)–*i. e.* the wife, should certainly not pay. One contracted by the son, the woman (**yoshit**) *i. e.* mother should not pay. Similarly, a debt incurred by the son, the father need not pay. So the husband need not pay that contracted by the wife. The clause "except when it is (contracted) for family purposes" (**kutumbârthâdṛite**) qualifies all.

And therefore by whomsoever a debt is incurred for a family purpose that should be paid by the head of the family. In his absence, it should be paid by those who are entitled to take his share. This has already been said.

The Author will say further on that a debt should be paid by sons and grandsons. He mentions an exception before (mentioning) the rule (itself).

Yâjñvalkya Verse 47.

The son should not pay the paternal debt which was contracted for the purposes of spirituous liquor, lust or gambling, or which is due as the balance of an unpaid fine or toll as also a gift without any consideration.

Mitâksharâ :—A debt which was contracted[1] for drinking spirituous liquor. Contracted for lust *i. e.* brought about by a passion for women. In gambling, *i. e.* brought about by a defeat (in it). The balance due from a payment of fine and toll. Idle gifts (or gifts without consideration)—(**vṛithâ dânaṃ**) what has been promised to rogues, bards, wrestlers &c. As it has been said "What has been given to a rogue, a bard, a wrestler, a quack, a liar and a cheat, and to swindlers, itinerant singers and dancers and to thieves bears no fruit."

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[1] Here the Instrumental has the force of the Dative. The instrumental denotes the हेतु under the व्या. सू. 'हेतौ' 2-3-23. The example given in the कौमुदी is अध्ययनेन वसति—here अध्ययनेन is equivalent to अध्ययनाय.

* Page 32,

Such a debt, when incurred by the father, the son and others should not pay *i. e.* to the vintner and others.

Here from the use of the word 'balance' in the text "a balance of on unpaid fine or toll" it should not be supposed that the entire amount is to be paid. As **Aus'anasa** has said: "A son should not pay a fine or the balance of it, the (amount of the) toll or its balance, and also whatever is not legal or capable of being recovered by a suit." It has also been said by **Gautama** that "(money due from a father on account of) a debt incurred for spirituous liquor, or a *śulka,* or in gambling or for amorous pleasures as also a fine shall not involve a son.—"The meaning is that they do not devolve upon a son. By this (text) a debt which should not be paid has been mentioned.

The Author mentions an exception to the text "Nor a husband that of the wife."[1]

Yâjñavalkya Verse 48.

The debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband; since their livelihood depends upon them.

Mitâksharâ:—*Herdsman* (**gopaḥ**)—*i. e.* a cowherd. *A vintner*—(**s'aundikaḥ**)-*i. e.* a liquor-manufacturer. A *dancer* (**s'ailûshaḥ**) *i. e.* an actor. A *washerman* (**rajakaḥ**) *i. e.* A dyer of clothes. *A hunter* (**wyâdhaḥ**)

Whichsoever debt is incurred by the wives of these should be paid by the husbands. *Since* (**yasmât**) their livelihood (**vṛittiḥ**) *i. e.* living, depends upon them (**tadâs'rayâ**) *i. e.* dependent upon women. By specifically mentioning the reason (of this rule) *viz.* "since their livelihood depends upon them" it appears that (persons) whose livelihood depends upon women should also pay a debt incurred by the wife.

The Author mentions the exception to the rule that "A wife should not pay a debt incurred by the husband."[2]

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[1] Yâjñ. II 46 page 73. ll. 9-24 above.

[2] Yâjñ. II 46 page 73 l. 10.

Yâjñavalkya Verse 49.

A debt agreed to by her, or which was contracted by her jointly with the husband, or by herself (alone) should be paid by a woman. A woman is not bound to pay any other debt.

A debt which was agreed to should be paid.

Mitâksharâ:—A debt which was agreed[1] to (**pratipannam**) on being charged or enjoined by the husband who was either dying or proceeding on a journey, such a debt of the husband should be paid. Likewise a debt which was incurred by the wife *jointly with the husband* (**patyâ saha**), even that, should be paid by the wife in the absence of the husband, when she is sonless. So also a debt which was incurred by *herself alone* (**Swayameva**) should even be paid (by her).

It may be said-"It need not be mentioned that a debt agreed to by the wife should be paid by her"; because there exists no doubt[2] about her liability to pay on account of the agreement.

The answer is that on account of the text[3] "A wife, a son, and a slave—all the three are considered to be incapable of having property" whatever they acquire becomes the property of him to whom they belong; they are without any property; and a doubt may be created about the non-payment and hence the text. "A debt agreed to by a woman should be paid by her " has been mentioned. Likewise the text referred to above does not lay down the incapacity of women and others to hold property; inasmuch as the object of the text is to argue their dependence alone. Moreover, this will be made clear in the chapter on partition.

It may also be said:—"Then it need not have been said that *a woman is not bound to pay any other debt*," because the non-liability for other debt follows from the principal rule itself.[4] To this the answer is that it is mentioned as an exception to the general rule contained in the text.—" A debt agreed to by a woman should be paid by her, as also that which was contracted by her jointly with the husband." The purport is that any other (**anyat**) bad debt, covered by the text "(a debt incurred for) spirituous liquor or for amorous passion &c.[1] "should not be paid even if it had been agreed to or contracted jointly with the husband.

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[1] The Translation given here is in accordance with the two glosses *viz.*, Balambhaṭṭi and Subodhini. The better rendering of the Mitâksharâ would appear to be as follows. "That which was assented to by the wife acting under the wish of her husband who was either in a dying condition or was about to set out on a journey." This would make it a debt incurred by her but for and on behalf of her husband. The two glosses appear to indicate it as a debt incurred in the first instance by the husband, but of which the liability was subsequently undertaken by the wife when the husband was on his death-bed or about to set out on a journey.

[2] About her liability to pay, on account of the agreement.

[3] Manu VIII. 416.

[4] *i. e.* the one contained in the first three quarters of Yâjñavalkya II. 49.

The Author mentions again the threefold classification, *viz.* what debt should be paid and at what time also and when should it be paid.

Yâjñavalkya Verse 50.

When the father has gone abroad, is dead or is immersed in difficulties, his debt should be paid by the sons and grandsons, when established by witnesses in case of a dispute.

A debt payable by sons and grandsons.

Mitâksharâ :—If the father, without paying a debt which is payable, be dead (**pretaḥ**), or is gone to a distant country, or is attacked by an incurable disease and the like, then the debt incurred by him when made known, (should be paid) by the son or the grandson; and even when there exists no property of the father, in their capacity as son and grandson.

Here the order (to be observed) is also thus: in the absence of the father, the son, in the absence of the son, the grandson. When the son or the grandson set up a denial, a debt proved by (the plaintiff creditor) by means of witnesses and others should be paid by the sons and grandsons. This is the (order of) construction.

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Here the text says only so much *viz.* "When the father has gone abroad." The particular interval, however, should be allowed as mentioned by **Nârada** :[2] Where the father, uncle or the eldest brother has gone abroad, the son (nephew or younger brother) is not bound to pay his debt before the lapse of twenty years." And even in case of death, he should not pay before he reaches the age of majority. After reaching the age of majority, however, he should pay. That period, moreover, has been indicated by the same author[3] "Up to the eighth year, a child is viewed in the same light as an embryo. A youth who has not reached the age of sixteeen, is called a *Pauganda*. After that he is (considered as) a major and is independent in the absence of his parents." Although after the death of the parents he becomes indepedent eventhough a minor, still he does not become liable for (the payment of) debts. As has been said[4] : "One, who though indepedent, has not yet attained

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[1] Yâjñ. II 47.

[2] Ch. I. 14.

[3] Narada Chapt. I 35-36.

[4] By *Nârada* Ch. I 31.

(the age of) majority is not liable for a lebt. For it has been laid down that (real) independence belongs to the senior; (and) seniority is determined both by capacity and age." Similarly a prohibition against an arrest or summons is also noticeable *vide*: "One who has not at arrived at years of discretion, a messenger, one about to distribute alms, one observing a vow, and persons immersed in difficulties,—these persons must not be arrested nor shall the king summon them (before a court of justice).[1] Therefore, "Hence every one standing in the capacity of a son, leaving aside his personal insterests, should free his father from debts by (all) efforts, so that he may not (have to) go to hell." 'Every one standing in the capacity of a son' should be explained as 'a son who has attained the age of majority'. For (offering) a *Srâdha*, however, even a youth has authority, *vide* the text of **Gautama** *viz*: "One must not make him (a child) recite Vedic Texts, except in pronouncing *Śwadhâ*.[2]

By the use of the plural number in "Sons and grandsons," (it is indicated that) if there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay. As says **Nârada**[3] "Therefore, when the father is dead the sons should pay the debt each according to his share, when they are divided; or if undivided (it should be paid) by one who holds the lead (in the family)" Here although, it has been generally said that 'the debt should be paid by sons and grandsons', even then a distinction should be observed that by the son the debt should be discharged together with interest similarly as the father would do; by the grandson, however, only the amount equal to the original principal and not the interset. *Vide* the text of **Brihaspati**: "The debt of the father which has been proved, should be paid by the sons as if it were their own (debt); the granfather's debt should be paid in an even amount; his (*i. e.* grandson's) son, however, is not liable to pay any debt." Here from the general use of the term 'proved,' the use of the term "witnesses" in the expression "established by witnessse'' is indicative by implication of any means of proof. Even amount (*Samaṃ*) *i.e.* as much as was taken should be paid, and not interest. His son (*Tatsutasya*) *i. e.* great-grandson is not liable to pay when he has received no property. This moreover will be made clear in the next verse.

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[1] *Narada* Ch. I. 45.

[2] *Gautama* II. 5. The expression "pronouncing Swadhâ" includes by implication the performance of all exequial rites". (पित्र्यस्य सर्वस्य कर्मण उपलक्षणम्) हरदत्त.

[3] Ch. I, 2.

In the discharge of a debt, the debter, his son and grandson have been indicated as the three persons who are liable; their order of liability has also been pointed out when they all co-exist. Now the Author mentions the order (of liability) when these and (others also) who are liable, exist together.

Yâjñavalkya Verse 51.

The heir who takes the heritage, as also he who takes the woman (of the deceased) should be made to pay his debts, or (failing these) the son when the parental estate has not gone to another. Of a sonless man, those who take the heritage (should be made to pay the debts.)

Mitâksharâ:—Property which belongs to another, but becomes one's own otherwise than by purchase etc. is (termed) **ṛiktha** (*heritage*). He who takes the heritage by inheritance is (called) a **ṛiktha-grâhaḥ.** *He should be made to pay the debt.* (**sa ṛiṇam dâpyaḥ**). This is the meaning. He who takes the property of another in the form of a heritage, should be made to pay the debts incurred by such a one, and not a thief etc. He who takes the woman *i. e.* the wife, is a **Yoshitgrâhaḥ.** He should be made to pay in the same manner. Whosesoever wife a man takes, he should be made to pay the debts of him. The wife has been specially mentioned as it is (*i. e.* the term) incapable of falling under the term **ṛiktha** as also it is indivisible property. A son also *when the parental estate has not gone to another* (**ananyâs'ritadravyaḥ**) should be made to pay the debt. That which has gone to another is wealth gone to another (*anyâśritam*). He whose wealth, belonging to his father or mother, has gone to another is one whose wealth has gone to another (*anyaśritadrayah*). He whose wealth has not gone to another is an **ananyâs'ritadrâyaḥ.** Of a sonless man those who take the heritage should be made to pay the debts. This is the construction. When these co-exist the order (of priority) is the same * PAGE 34 as is stated in the text *i. e.* he who takes the heritage should be made to pay the debts, in his absence he who takes the wife, and in his absence the son.

It may be said that of these the co-existence itself is not possible; because according to the text "Not brothers, nor the paternal ascendants, (but) the sons are entitled to take the heritage of the father", it being impossible for another to take the inheritance when a son exists. It is also not possible to find one 'who takes a wife'—on account of the text "Nor is a second husband ever recommended for virtuous women." Moreover, it is also improper to say that the son should be made to pay the debt, as it has been (already)[1] said that the debt should be paid by sons and grandsons.

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[1] Yâjña. II. 50 page 76-l. 9 above.

The qualifying expression 'when the parental estate has gone to another' is also meaningless, as it is impossible for the property to go to another when the son exists, and even if it were possible, that import is already expressed by the clause "He who takes the heritage &c." Lastly, it should also not be said that "(The debts) of a sonless man (should be paid by) those who take the assets," because it has been established that he who takes the assets should be made to pay the debts even if the son exists. It follows therefore that much more is one who takes the assets liable to pay the debts when there is no son.[1] To this the answer is as follows:–It is possible that another may take the heritage (even) when the son exists as there is no (right of) succession to inheritance for the impotent, the blind, the deaf and like others even though they occupy the position of sons. Moreover, the Author says further on,[2] after commencing (in order) with the impotent and others, that "These should only be maintained without a share." As **Gautama**[3] has said "According to some, the son of a woman of equal caste even does not inherit, if he be living unrighteously." Hence also, when the sons are impotent or otherwise (incompetent), and the son of a woman of equal caste leads an unrighteous life, the uncle, his son and (like) others take the heritage.

Although it is not possible for one to take the wife of another as the *Śâstras*[4] are opposed, still one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband. A man is called a *Yoshidgrâhi*[5] when he takes the last of the four kinds of *Swairiṇi* (wanton) women or the first of the three kinds *Punarbhû* (re-married) women: As says **Nârada**[6] "(Besides the lawful wives) seven other sorts of wives are mentioned in order, who had[7] previously belonged to another. Among these the *Punarbhû* (re-married) is of three kinds, and the *Swairiṇi* (wanton woman) is fourfold. A maiden not deflowered, but bearing the taint of the acceptance[8] (only) of the hand (by the bridegroom) is termed the **first** *Punarbhû* on account of the performance of the ceremony of marriage a second time. When a woman has committed a crime and she is given in marriage to anothor by the elders, taking into consideration the usages of the country, is termed the **Second** (*Punarbhû*).

Nature of women owned by another and others

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1. Here ends the five-fold objection which was commenced on p. 78-l. 31.
2. II. Verse 140.
3. Ch. XXVIII. 40.
4. Or, as it would be opposed to the Śâstras.
5. One who takes the wife of another.
6. Ch. XII. 45-53.
7. Dr. Tolly translates as, "Who have previously been enjoyed by another man."
8. Pâṇigrahaṇa (पाणिग्रहण) is the acceptance of the hand of the bride by the bridegroom.

Who has committed a crime means who has committed adultery. When a woman in the absence of the brothers-in-law, is given (in marriage) by her relations to a *sapinda*, who is of the same caste, she is termed the **third** (*Punarbhû*). When a woman, no matter whether she has borne children or not, goes to live with another man from lust, even while her husband is living—she is the **first Swairini**. One who, after having left the husband of her youth and betaken herself to another man, returns into the house of her husband is known as the **second** (*Swairiṇî*). When after the death of her husband, and leaving aside her brothers-in-law and other near relations a woman unites herself with a stranger through love, she is called the **third** (*Swairiṇî*). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man, saying.—'I am, thine,' is declared to be the **fourth** (*Swairiṇi*). "The debts contracted by the husbands of the last of the *Swairiṇis* and of the first of the *Punarbhûs* must be paid by him who lives with them."[1].

The same author has mentioned even other persons (than these) who take the wife of another who are liable for the discharge of debts. "If however, a woman who has considerable property or has a child and repairs to another man with these, that man must pay the debt contracted by her husband, or he must abandon her."[2]

One having considerable property is a *Sapradhanâ i. e.* possessing enormous wealth. So also "He who has intercourse with the wife of a dead man who has neither wealth nor a son, shall have to pay the debt of her husband, because she herself is considered as his property."[3]

Moreover, the repetition of the word *putra* is only indicative of order. By the expression *ananyâśritadravyaḥ* it is indicated that even when there is no heritage, of the many sons, he alone is competant to discharge the debts who is competent to take a share and not the incompetant such as the blind and like others. The expression "Of a sonless man, those who take the heritage" is also indicative of one who has no 'son or grandson.' *i. e.* if the great-grandsons etc. take the heritage then they should be made to pay the debts, and not otherwise; this is the meaning.

It has already been said that sons and grandsons should be made to pay (the debts) even when they do not take the heritage. As says **Nârada.**[4] "If a debt which has been inherited in an uninterrupted line of descent has not been paid by the sons, such a debt of the grandfather must be discharged

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1. Nârada I. 24.
2. Narada I. 21.
3. Nârada 1-22.
4. Ch. I. 4.

by his grandsons. The liability for it ceases after the fourth (person) in descent." Thus everything[1] is faultless. Or, it has been said "that failing him who takes the wife, the son should be made to pay."

It has been laid down that failing the son, one who takes the wife should be made to pay. By the word *rikthi* in the expression "*putrahînasya rikthinih*" the wife alone is indicated. Because the text is "She herself is considererd as his property;" as also—"He who takes a man's wife, takes his wealth."

It may be said, the two expressions. "In the absence of him who takes the wife, the son should be made to pay the debt" and "In the absence of a son, he who takes the wife (should be made to pay)"—are mutually contradictory. When both exist no one should be made to pay. (To this the answer is) There is no fault here. In the absence of those who take the last *Swairini*, of the first *Punarbhû* or a wife having considerable wealth, the son should be made to pay. And in the absence of a son he who takes a wife having no property or child should be made to pay. This very thing has been said by **Nârada**:[2] "Of the three *viz.* he who takes the wealth as well as he who takes the wife and (lastly) the son, he is liable for the debts who takes the wealth. The son is liable in the absence of him who takes the wife or of him who takes the wealth; and he who takes the wife (is liable) in the absence of him who takes the wealth or of the son." When all the three *viz.* he who takes the wealth or he who takes the wife and (lastly) the son, exist together, he who takes the estate becomes liable for the debt. The son in the absence of him who takes the wife or him who takes the wealth. (The words) *Strî* and *dhana* make up (the compound word) *Strîdhana*. Those who possess these (two) are (indicated by the compound word) *strîdhaninau*. In the absence of these two the *strîdhaninau*, the son alone becomes liable for the debts. In the absence of him who takes the wealth or of the son, he who takes the wife is alone liable for the debts. In the absence of him who takes the wife, the son is liable for the debts, and in the absence of the son he who takes the wife. Thus is removed as, before, the apparent contradiction.

The clause "Of a sonless man, those who take the heritage (should be made to pay the debts)" has another explanation. When it is asked to whom these persons who take the wealth or the wife as also the son, should be made to pay, the answer is that they should be made to pay the creditor, in his absence his son &c; and when in theabsence of his son &c. it is asked to whom should these be made to pay, this clause would have an application.

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[1] This has a reference to the five points of objection stated above. (See p. 79-n. 1).

[2] Ch, I. 23.

[3] Ch.I. 42-43.

The expression "Of a sonless man, those who take the haritage". means this: He who is the *rikthî i. e.* a *sapinda*, or another who is entitled to take the inheritance of a creditor who has no son or other issue, should be made to pay to him—the *rikthî* (the debtor). For **Nârada**[1] has clearly laid down in plain words:—"Whatever debt is due to a (deceased) Brâhmaṇa creditor who leaves issue is payable to the issue. If there be no issue it should be paid to his *sakulyas*, and on failure of these, to his own *bundhus* or kindred". When, however, there are neither *sakulyas*, nor relatives, nor the kindred, then it should be paid to the twice-born. On failure of these, it should be cast into the waters."

While mentioning the prohibitions regarding the recovery of debts from particular individuals, the Author mentions other prohibitions.

Yâjñavalkya Verse 52.

Among brothers, husband and wife, and father and son, the relation of suretyship, lending or being witnesses has not been allowed while they are undivided.

The relation of suretyship, lending and being witnesses prohibited when (the family) undivided.

Mitakshara:—The relation of a surety is *suretyship* (**prâtibhâvyam**). Of the brothers, the husband and wife, and the father and son *while the estate is undivided*, (**avibhakte dravye**) *i. e.* before the partition of the estate, the relation of suretyship, lending or being a witness *has not been allowed* (**na smritâm**) **by Manu** and others. Nay, it has been even prohibited as there is (still) the community of wealth. As it is quite possible that suretyship and being a witness might lead in the end to loss of money, and also as a debt requires necessarily to be repaid. This rule (of prohibition), however, applies when there is no mutual consent. For, by mutual consent, the relationship of suretyship &c. may verily take place even though (the members be) undivided. After partition it takes place even though there is no mutual consent.

It may be said, the prohibition against the relation of suretyship &c. between the couple before partion is not proper. As there is no (possibility of a) partition between them, the qualification[2] would be meaningless. And the absence of a partition has been laid down by **Âpastamba**[3] (thus):—"No division takes place between husband and wife" (To this the answer is) True; but the absence of a division has a reference only to the rites in connection with the preparation of the *S'rauta*[1] and the *Smârta*[1] fires and to the rewards proceeding from these (rites), and not moreover to all kinds of acts and property. For, after saying 'no (division) takes place between husband and wife', and anticipating the question 'Why does it not take place'? the (same) author has thus laid down the reason (for this rule): "For, from the time of marriage, they are united in religious ceremonies, likewise also as regards the rewards for works by which spiritual merit is acquired"[2] *For i. e.* since their union has been laid down in religious ceremonies beginning with the acceptance of the hand (of the bride by the bridegroom), vide the text "The husband and wife should consecrate the (sacred) fire." Therefore since the two have a joint right in the consecration of the fire, they have also a (similar) and joint right in regard to the rites which are to be performed by means of the sacred fire perpared by means of the consecration. Moreover from the text[3] ("Let the householder perform) the *Smârta* ceremonies on the nuptial fire &c.", the two have a joint right even in (the performance of) the rites to be performed by means of the nuptial fire. Therefore in ceremonies which are independent of either of the two fires such as the *pûrta*[4] rites, the husband and the wife have each a right independently of one another. Moreover, the (constant) union of the husband and wife has been laid down in reference to (the attainment of) heaven &c. (which are) the rewards for meritorious deeds. vide the *S'rûti* text "May you (two) start an imperishable body in the heaven" &c. Thus it should be understood that the union of the two exists in reference to those acts (only) for which they have a joint right and not, moreover, in the rewards also of those performed with the husband's permission such as *pûrta*.

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[1] Ch. I. 112-113.

[2] *viz.* 'before partition'.

[3] 2-6-14-16.

It may be said that the jointness (of husband and wife) has been laid down even, in connection with the ownership over wealth (vide the text [5].—"And with respect to the acquisition of property. For they declare that it is not a theft if a wife expends money on occasions (of necessity) during her husband's absence." (To this the answer is) True; but this text has indicated the ownership of the wife over wealth, and not the absence of a division &c. Since after stating "With respect to the acquisition of property[1]" the Author has mentioned the reason of the rule (stated) there. Thus, it means, that since **Manu** and others do not declare it to be theft in cases where in the husband's absence, the wife spends on special and necessary duties such as offering a meal or alms to a guest, therefore the right of ownership over property exists in favour of the wife also. Otherwise it (*i. e.* her act) would be theft. Therefore a wife also may have a share at the option of the husband and not at her own will. As the Author (himself) says further on.[2] " If he make the allotments equal his wives should be given equal shares."

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[1] A *Srauta* (श्रौत) Karma is that which is prescribed by the *Sruti* or *Veda*. A *smârta* is that which is laid down in the *Smritis*. *e. g.* in the several Grihya works of each *Sâkhâ* of the several Vedas.

[2] Âpastamba 2–6–14–(17–18.)

[3] Yâjñ. I. 97.

✓[4] *Pûrta* पूर्त—as opposed to and contradistinguished from इष्ट. See further on Mitâksharâ Sk. p. 81. l. 1–2. An इष्ट *Karma* has been thus defined.

अग्निहोत्रं तपः सत्यं वेदानां चैव पालनम् ।
आतिथ्यं वैश्वदेवश्च इष्टमित्यभिधीयते ॥

While a पूर्त *Karma* has been thus defined.

वापीकूपतडागादि देवतायतनानि च ।
अन्नप्रदानमारामः पूर्तमित्यभिधीयते ॥

[5] Âpastamba 2. 6. 14. (19. 20.)

The Law of Suretyship.

Now the Author proceeds to consider the law of suretyship.

Yâjñavalkya Verse 53.

Suretyship is ordained for appearance, assurance and for payment. The first two however should be made to pay in case of default while in the case of the last, even the sons (should be made to pay).

Suretyship is three-fold.

Mitâksharâ:—Suretyship (**prâtibhâvyam**) is a 'contract with another person with the object of creating confidence.' That, moreover is divided threefold according to the difference in the subject matter. e. g. *for appearance* (**darsane**) *viz.* with the words 'I shall produce him whenever his appearance is necessary.' By way of *assurance* (**pratyaye**) *i. e.* confidence *e. g.* 'lend him money, upon my assurance, he will not deceive you. Since he is the son of such and such a person, or he possesses a very fertile land, or possesses an excellent village. *For payment* (**dâne**) *e. g.* " If he does not pay, then I myself will pay." Thus is suretyship ordained. This clause is to be taken along with each. *The first two however* (**âdyau tu**) *i. e.* the sureties for appearance and of assurance. *In case of default* (**vitathe**) *i. e.* if things turn out otherwise, that is to say in case of non-appearance or a breach of the assurance; *should be made to pay* (**Dâpyau**) *i. e.* the amount at issue, to the creditor by the king. *In the case of the last* (**itarasya**) *i. e.* of the surety for payment even the sons should be made to pay. By default (*Vitathe*) is meant when the debtor evades payment either fraudulently or by (pleading) poverty. By saying 'in the case of the last even the sons' it has been (impliedly) said that the sons of the first two should not be made to pay. By mentioning 'the sons' it has been indicated that grandsons should not be made to pay.

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[1] *i. e.* Âpastamba.

[2] *i. e.* Yâjña. II. 115.

With a view to make this very thing clear, the Author says

Yâjñavalkya Verse 54.

Where a surety for appearance or a surety by assurance dies the sons of such a one must not pay; (but) in the case of a surety for payment, they should pay.

Sons of a surety for appearance must not pay the debt.

Mitâkshara:—When a *surety for appearance* or a *surety by assurance* dies then the sons of these two must not pay the paternal debt which has been incurred as a surety. Where, however, a man standing surety for payment dies his sons should pay, (and) not the grandsons. And these two should pay the principal amount only, not the interest. *Vide* the text of **Vyâsa** *viz.* "A grandson should pay the debt of the grandfather, as also a son that which is incurred as a surety, equal (in amount) to the principal only; their sons, moreover should not pay. This is (the) fixed (rule)." A grandson should pay his grandfather's debt excepting that which was incurred under a suretyship, *equal* in amount *i. e.* as much as was taken and not the interest. Similarly the son also (*i. e.* of the debtor) should pay his father's debt incurred as a surety equal only to the principal amount. The sons of these—of the son and the grandson—*i. e.* the grandson and the great-grandson, should not be made to pay a surety-debt or even a debt which is not a surety-debt respectively when they have received no property.

* Page 37.

As for the text, "If the debtor is money-less, and the surety possesses wealth, he shall be liable to pay the principal; he should not pay interest" that too should be explained as follows:—*Lagnakaḥ* is the surety, *Khâdakaḥ* is the debtor. If a *lagnaka* dies possessed of wealth then only the principal amount should be paid by his son, not the interest.

Where a surety for appearance or a surety by assurance has stood surety after obtaining a sufficient pledge, there even his sons should pay the surety debt out of that very pledge. As says **Kâtyâyana** "Where a man stands surety for appearence after obtaining a sufficient pledge from the debtor, his son shall be compelled to pay the debt from it in the[1] absence of his father." The use of the word *assurance* indicates by implication (also)[2] *appearance. In the absence of the father i. e.* when the father is dead or has gone to a distant region.

Where there are more sureties than one, (a question would arise) how should the debt be paid? So the Author says.

Yâjñavalkya Verse 55.

When there are more sureties than one, they should pay an amount proportionate to their share. But when they are bound jointly and severally they may pay accordiug to the choise of the Creditor.

Mode of payment of debt when there are several sureties.

Mitaksharâ:—If in one transaction, there are two or more sureties, then they should divide the debt and (each) pay proportionately to the share (of each). When sureties are bound jointly and severally **(Ekachhhayâs'riteshu)**—the (*Chhâya*) image *i. e.* the resemblance of one *i. e.* of the debtor. (Those) whose liability) is determined by it are known as *sureties bound jointly and severally.* As the debtor stands liable for paying the whole amount, so also are sureties for payment bound jointly and severally to pay the entire amount. In this way when there are sureties for appearance or by assurance as also those who are bound severally they should pay *according to the choice:* **(Yathâkâmam)** *i. e.* according to the wish of the **Dhanika** *i. e. the creditor.* And hence whomsoever the creditor asks, having regard to his wealth &c, that one should pay the whole amount and not a portion. Of those who are severally bound, if any one has gone abroad and his son is near, then he should be made to pay the whole according to the option of the creditor. When however he is dead, his son should be made to pay to the extent of his father's share without interest. As says **Kâtyâyana** "Of sureties jointly and severally bound, any one who is available may be made to pay. In his absence abroad his son should be made to pay the whole. But if he be dead his son should be made to pay the whole debt.

Having stated the law relating to the payment of debts of suretyship, the Author states the law as to the recovery of the amount paid by the surety.

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[1] 'विना पित्रतृधनात्' is another reading—which would mean 'even when the son has not received assets from the father.'

[2] *i. e.* the mention of the surety for appearance includes the surety by assuaucre.

Yâjñavalkya Verse 56.

For a debt which a surety has been made to pay publicly to the creditor, double that amount becomes repayable to him by the debtors.

Debtors should pay double to the surety.

Mitâksharâ:—The amount *which* (**yad**) the *surety* (**pratibhûḥ**) or his son being harassed by the creditor, is *publicly* (**prakâs'aṃ**) *i. e.* in the presence of all the people, *made to pay* (**dâpito**) to the *creditor* (**dhanino**) by the king, and not which he has made voluntarily by going to him out of a craving for a double amount. As says **Nârada**[1]: "Whatever amount the surety shall pay when harassed by the creditor, the debtor shall pay double the amount to the surety." **Rinikaiḥ** *i. e. by the debtors.* Of him (**tasya**) *i. e.* of the surety. *A double* (**dwiguṇaṃ**) becomes repayable. That moreover should be paid forthwith without waiting for any particular time, because that is the force of the text. This moreover has a reference to money (only).

It may be said that this text regarding sureties[2] lays down a rule as to the double (payment)[3] only. And this rule is deducible even without prejudice to the one previously[4] laid down *i. e.* (about the increase) which indicates the (several) periods of time. Just as the rule[5] regarding the performance of the ritual for the birth (of a child) is (understood as being) laid down (to be) without prejudice to the rule about (the period of) impurity. Moreover, if it (i. e. the rule) is understood as laying down an immediate increased payment it being impossible for an immediate (increase * Page 38. *i. e.* a) calf in the case of the female of a beast, it carries us to the payment of the original principal alone. (To this the answer is) This is wrong. The present text would be meaningless if it is understood as laying down a rule only as to the doubling (of the principal), since the rule as to the doubling (of the principal) by regard to the periods of time has already been established by the text "Of cloth grain and gold the utmost increase is fourfold, threefold and twofold."[1] As for the females of a beast, even under the rule of increase by laspse of time, if there is no progeny, the beast alone is to be returned. Moreover, even when sometime after the payment of the amount the surety comes to an agreement with the debtor, it is possible to have the progeny then, or he may return the female beast along with the progeny already born before. So there is no force in this objection.

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[1] Ch. I. 121.

[2] *i. e.* Yajn. II. 56.

[3] And not that the double is payble at once.

[4] *i. e.* Yajn. II. 37–39.

[5] The *Jâteshti Nyâya* (जातेष्टि न्याय) is mentioned by Jaimini in, Sutras 38–39 of the third *Pâda* of the fourth *Adhyâya*. The discussion in this *nyâya* turns upon the question whether the जातेष्टि (Jâteshti) should be performed before or after the जातकर्म (Jâtakarma). The पूर्वपक्ष maintains that it should be performed immediately after the birth of the child, but the सिद्धान्तिन् says it should be after the जातकर्म and the conclusion is to the same effect.

The relevancy of this discussion here will be seen thus. The जातेष्टिन्याय lays down in substance the general rule of interpretation that where there are two rules and they refer to the same subject-matter they should be so interpreted and applied as to avoid as far as possible the fault of *incongruity* (see for a fuller discussion the सुबोधिनी and बालंभट्टी on verse 56). In the present case the application of the न्याय is invoked in this way by the पूर्वपक्ष (objector). Yâjñavalkya in verse 37 lays down the rule about the periods of time when interest is allowed to accumulate. In the present verse (*i. e.* 56) the rule laid down is that a surety who is compelled to pay is entitled to a double. Therefore the suggestion in the पूर्वपक्ष is that the rule in verse 56 should be taken as subject to or *without prejudice* (अबाध) to that in verses 38 and 39, so that the double that the surety is entitled is not payable *at once* but subjected to the conditions laid down in verses 38 and 39. This position has been refuted by the सिद्धान्तिन् and the conclusion arrived at is that the double that is due payable to the surety under this verse is payable *at once* (सद्य एव द्विगुणं दातव्यम्). Note the following extract from the *Subodhini*. प्रकृते त्वेवमुपयोगः । यथा शुद्धकालरूपमंगं अबाधित्वैव जातेष्टिविधानं, तथा 'अशीतिभागो वृद्धिः स्यादि' त्यादिना पूर्वोक्तो यः कालक्रमेण वृद्धिक्रमः तमबाधित्वैव द्वैगुण्यविधानं । अतश्च न सद्यो द्वैगुण्यमिति ।

Again, a surety–debt[2] is a debt, which is incurred voluntarily and the payment made by the surety is therefore necessarily a voluntary payment. And there is no interest allowed for a voluntary payment before a demand. As has been said.[3] "A friendly loan does not carry interest when no demand is made. If it remains unpaid on being demanded, it carries interest at five per cent." Therefore this text lays down that this debt which originates from a voluntary payment (by the surety) even though undemanded[4] would (at the most) increase in course of time as far as double, commencing from the day of payment. This also is wrong. Such a conclusion cannot be drawn from this text. The only inference deducible is that a double should be repaid. Therefore what has been said above is proper *viz.* that having regard to the force of the text the double should be repaid without regard to the rule as to the periods of time.

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[1] Yajn. II. 39 see above.

[2] Here there is an attempt at a *pun* upon the word प्रीतिदत्त. The compound is to be solved as प्रीत्यै दत्तं—given for the pleasure of the payee and not (प्रीत्या) of the payer. The fallacy is best exposed by taking the original word प्रीतिदत्त as it is. In Sanskrit it may mean "something given for pleasing another" or it may mean a friendly loan—as it is technically understood in the text cited from *Nârada.* The ground for the objection stated in the text, is supplied by the ambiguous middle प्रीतिदत्त.

[3] Nârada I. 109.

[4] By the surety.

The Author mentions exceptions to the rule as to a double payment to the surety which has been laid down (above) as a general rule.

Yâjñavalkya Verse 57.

Progeny in the case of female beasts, three-fold in the case of corn, four-fold in the case of cloth, and eightfold in the case of liquids.[1]

Mitâksharâ:—Like the double in the case of gold, the female beasts &c. should be caused to be returned with the interest as declared above without regard to (the rule as to) time. As for the verse itself,[2] it has already been explained. The purport is that whichever limit has been laid down as the highest (increment) for each particular thing, with that increase it should be paid at once by the debtor to the surety who has paid (the principal), and without waiting for any particular period.

When however a surety for apperance is unable, at the appointed time, to produce the debtor, then a three fortnight's (time) should be allowed to him for finding out the debtor. Then if he produces him, he shound be released,[3] otherwise he should be made to pay the amount in dispute. *Vide* the text of **Kâtyâyana.** "As for finding out an absconding debtor, time should be given to the extent of tree fortnights as the farthest limit. If during that time the surety point him out, the surety should be absolved. If (however) the surety do not point him out after the lapse of the time (allowed), he should be made to pay the amount guaranteed. This is also the rule when he (*i. e.* the debtor)[4] is dead."

The same writer has also laid down the rule prohibiting particular persons from becoming sureties *viz.* "Not the master, nor an enemy, nor one holding a power from the master; nor one under restraint, nor convict nor ever one (who is) of a doubtful charcter; nor also an heir, nor a friend, nor the resident student, nor one engaged on a commission from the king, nor also those persons who have entered the fourth[5] order, nor one who is not competent to pay (the amount to) the creditor and an equal amount to the the king as a fine, nor one whose father is living, nor a wayward, nor one who is not

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[1] *i. e.* are allowed to a surety who has paid the debt on account of the principal debtor.

[2] *i. e.* of Yâjñavalkya v. 57.

[3] From his liability as a surety.

[4] See Bâlambhaṭṭi.

[5] *i. e.* the last of the four stages of life according to the Aryan law-*viz.* ब्रह्मचर्य, गार्हस्थ्य, वानप्रस्थ and संन्यास the life of a celibate, householder, hermit and ascetic.

(properly) known should be accepted as a surety guaranteeing performance by himself" *One of a dubtful character* (ABHIS'ASTAH) *i. e.* one upon whom hangs an accusation. *Resident student* (Atyantavâsins) *i. e.* students leading a celibate life and specially known as *Naishthika—brahmachârîs.*[1]

Here ends the law as to sureties.

The Law of Pledges.

The law of pledges.

Kinds of pladges.

In a loan transaction of money the guarantee to be offered to the creditor is two-fold *viz.* a surety and a pledge. As says **Nârada**[2]: "The guarantee to be offered to the creditor is two fold (*viz.*) a surtey and a pledge." Of these (the law as to) surtey has been dealt with. Now the pledge is being described. A *pledge* (**Âdhi**) which is deposited *i. e.* hypothecated by the debtor with the creditor for the sake of (creating) confidence for the amount borrowed, (that) is an *Âdhi.* That moreover is two-fold: **Kritakâla** or a pledge with a time-limit, and **Akritakâla**, a pledge with no time-limit. Each of these again is two-fold. Pledge for custody and a pledge for use. As says **Narada**[3]: "A pledge is that which is deposited and is known to be of two kinds; one for (the redemption of) which a time-limit is fixed and the (other) which is to be retained until payment. Again it is said to be two-fold; a pledge for mere custody and a pledge for enjoyment. 'At the period fixed' *i. e.* at the time of the loan itself. *e.g.* (with the word) at such and such a time-at the illumination festival--this pledge is to be redeemed by me, otherwise it will become yours. At the time thus appointed (it is) to be taken away, *i. e.* to be taken near him-in other words-to be redeemed. *Deya* (what is to be given) means (the act of) giving. Until payment. (yâvaddeyam) means without prejudice to the *Deya*. *Udyatah* means fixed *i. e.* appointed. 'Fixed until payment' (**Yâvaddeyodyatah**) means the time for which is the interval for the repayment of the borrowed amount, *i. e.* for which the time has not been fixed. For safe custody *i. e.* for being preserved.

* PAGE 39.

Yâjñavalkya Verse 58.

A pledge lapses if (it is) not redeemed by the time the principal amount is doubled; that with a time limit, (lapses) by (the lapse of) the time; a usufructuary pledge never lapses.

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[1] See Yâjn. I. 50 and Mitâksharâ thereon.

[2] Ch. I. 117.

[3] I. 124 Dr. Jolly translates thus: "That to which a title is given (*adhikriyate*) is called a pledge.

Special rules about the pledge and its four kinds described *above.*

Mitâksharâ:—If, when the amount lent becomes double in course of a time with the addition of interest as fixed by himself, (the pledge) is not redeemed by the debtor by the payment of money, then it lapses. *i.e.* the property of the debtor becomes the lender's own. b **Kâlakritaḥ** (*with a time-limit*) the word *Kâla* has been placed first under the rule of grammar in *Ahitâgnyâdishu*[1]—"in (the compounds) *Ahitâgni* and the like the words formed by the past passive participial terminations may be placed optionally at the beginning or end." That, moreover, will laspe when the appointed time is reached, whether before or after it is doubled. **Phalabhogyaḥ** *usufructuary* is that where the profits are to be enjoyed, c (*e.g.*) field, garden &c. That does not lapse at any time. By the text "at the time fixed, that with a time-limit lapses" the lapse of both kinds of pledges limited in time-*viz*, for safe custody and for enjoyment—has been laid down. The absence of a lapse of a pledge without a time-limit has been stated in the text "a usufructuary pledge does not perish." Therefore by 'the rule of the remainder' the text *viz*: "A pledge would lapse[2] &c." comes to be in reference to the pledge for safe custody and not to one having a time-limit.

When a lapse occurs: whether on account of the transgression of the d rule of doubling or by the violation of the condition as to time fixed (by the parties) a fourteen day's waiting time should be obsesrved—*vide* the text of **Brihaspati** *viz*: "When gold is doubled or the stipluated period has elapsed, the creditor becomes the owner of the pledge after waiting for twice-seven days. During this period the debtor may redeem the pledge by paying the amount".

It may be said 'it is improper to say: that a pledge shall lapse' in e the absence of circumstances, such as gift, sale &c. which (would) cause a cessation of the debtor's ownership as also in the absence of circumstances which would create the creditor's ownership, such as acceptance, purchase &c., and also because there would be a disagreement with the text of **Manu**[3] *viz* "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time." **Kâlasamrodha**—Accumulation on account of time—(the pledge) standing over for a long time. On account of the *Kâla samrodha i.e.* the debt remaining over for a long time, there *cannot be a transfer* of (Na nisargosti) a pledge *i.e.* there cannot be a hypothecation with another, *nor also a sale* (Na cha vikrayaḥ). Thus from the prohibition against hypothecation or sale (of a pledge) an absence of ownership of the creditor is deduced. (To this) the answer is : Even the act of pledging itself is considered as a circumstance, although coupled with a contingent condition, creating the creditor's ownership. The acceptance of a pledge also is well known in the world as a circumstance, also coupled with a contingency, creating the creditor's ownership. So when the amount becomes doubled, and also when the appointed time has arrived, the right of paying the amount becomes entirely extinct and therefore under the present text[1] there occurs an entire cessation of the debtor's right of ownerseip and the ownership of the creditor becomes absolute. Nor, moreover, is there a conflict with the text of **Manu.**[2] For, the text "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time" has been stated after introducing a pledge for enjoyment thus: "Nor, however, can he get interest on the loan when the pledge is for use". And there being a prohibition against hypothecation or sale in the case of a pledge for use and enjoyment, the creditor cannot acquire ownership. Here also it has been said viz. "one for enjoyment of profits does not lapse."

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[1] Vyâkarana Sútra 2-2-37 'वाहिताग्न्यादिषु.'

[2] *i.e.* the first half of verse 58.

[3] Ch. VIII. 143.

In the case of a pledge for custody, however, **Manu** has stated[3] (the rule) separately. "A pledge (for custody only) must not be used by force; (and) one (so) using it shall forfeit the interest." Here also it will be said hereafter.[4] "There shall be no interest if a pledge for safe custody is used." The text "A pledge when doubled lapses" has been stated with reference to a pledge for custody. Thus everything is without a contradiction.

Yâjñavalkya Verse 59.

There shall be no interest if a pledge for custody be used or one for use be damaged. ~~A pledge which~~ is spoiled or destroyed entirely shall be paid, unless it be by the act of God or the King.

Mitâkshara:—Moreover, *of a pledge for custody* (**Gopyadheḥ**) *e. g.* a copper pan, there shall to no interest in case of any use (made thereof). Although the use be slight, even a large (amount of) interest would be forfeited, as there is a breach of contract. So also, where the pledge is for possession and *use*, and the object of enjoyment, such as a bull or a copper pan, which is pledged with interest is damaged *i. e.* has been rendered unfit for (being dealt with in') any transaction, there is no interest. This is the context.

* PAGE 40.

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[1] *i. e.* of Yâjñavalkya.

[2] *i. e.* the one referred to above VIII. 143.

[3] Ch. VIII. 144.

[4] Verse 59 further on.

A pledge which has been *spoiled* (**Nashtaḥ**) *i. e.* has undergone deterioration *e. g.* a copper pot &c. on account of a hole or on account of its being broken &c. should be made as (it was) before and returned. Here a pledge for custody, if damaged, should be returned after it is restored to its former condition. And if it is used also, even the interest shall be forfeited.

A pledge for use if *spoiled* should be made as (it was) before and (then) returned. If it carries interest the interest should be given up. When it is destroyed *i. e.* has perished entirely, such a one also should be paid by paying the price. By paying it, he gets the amount with interest. When he does not pay then (even) the principal amount lapses. *Vide* the text of **Nâada**[1]:—" If it is destroyed, the principal lapses unless the loss is caused by fate or the king." Unless it be by fate or the king. *Fate* (Daivaṃ) *i. e.* fire, water, and generally any misfortune &c. Unless it be without the loss caused by fate & also by the king when it is without any fault on his part. In case where the destruction is caused by fate or the king, the original principal with interest or a fresh pledge should be given by the debtor. As is said: " When land is washed off by a stream, and also when it is taken away by the king, another pledge should be given or the amount paid to the creditor ". Here ' *washed off by stream* ' is indicative of acts of fate.

Yâjñavalkya Verse 60.

The (contract of) pledge is established by the (proof of its) acceptance (by the creditor.) If it suffers deterioration even when carefully kept, another must be substituted or the creditor must receive the amount (due to him).

Proof of a Pledge.

Mitâksharâ:—Moreover, *of a pledge* (**Âdheḥ**) *i. e.* of the one for use as well as that for custody. *By* (*the proof of*) *acceptance* (**Swîkaraṇât**) *i. e.* use. *Proof* (**Siddhiḥ**) of its acceptance and not merely by witnesses, and writings nor by (the proof of) mere intention. As says **Nârada**:[3] " Âdhi is said to be of two kinds, *viz.* (of) moveables as well as (of) immoveables. Both of these will be deemed to be established if there is possession, not otherwise." And the result of this is: "In cases of a pledge, gift or sale proof of a prior transaction is however stronger "[2] *i.* e. in transactions which have been completed by acceptance, evidence of a prior one is stronger, while the one in which there is no acceptance will not have force even though it be prior. And if such a pledge, even while it is being carefully protected in course of time, *suffers deterioration* (**Asâratâṃ**) *i. e.* becomes insufficient (as a security) for (the payment of) the original principal and interest even though not changed (in form) then either another pledge should be offered or the amount of the debt be paid to the creditor. By saying "deterioation even though carefully kept " it has been indicated that pledge should be carefully kept by the creditor.

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[1] Ch. I. 126.

[2] See Yâjñ II. 23 above, p. 41 above.

[3] Ch. I. 139.

The Author mentions an exception to the rule "A pledge lapses if doubled &c."[1]

Yâjñavalkya Verse 61.

In the case of a debt contracted on a Charitra pledge, the amont must be paid with interest, and in the case of a debt contracted on a chattel delivered as an earnest he shall pay twofold.

Exception to the rule that 'a pledge lapses when the debt is doubled.'

Mitâksharâ:—Charitram (conduct) *i. e.* good conduct. Pledge by a *charitra* is a *Charitra* pledge. Upon (the strength of) that whatever amount has been borrowed and kept for self or given to another. This is the purport. Relying upon the good faith of the creditor where a thing, even though very valuable, has been made over by the debtor to the creditor, and only a small amount is borrowed, or, where, relying upon the good faith of the debtor, the creditor has advanced a large amount to the debtor even after taking a pledge of a small value, that amount the king should cause to be paid with interest. The purport is this. A pledge of this sort does not lapse even though the amount is doubled, on the other hand the amonut should be paid (to the extent ot the) double only.

Similarly, **Satyankârakṛitaṃ**. *Kâra* (an act) is the same thing as) *Karaṇa* (making). The affix *Ghañ* (घञ्) is used here to denote action[2] (भाव *Bhâva*). The making of truth is *Satyankâraḥ*. The augment मुम् (*muṃ*) is used under the rule of grammar (6-3.70) "मुम् is the augment of सत्य and अगद् when the word कार follows." That which is made by means of s *Satyankâra* is a *Satyankârakṛita.* This is the meaning intended. When even at the time of offering the pledge itself it was agreed thus *viz.* even when the debt is doubled, I am to pay the double amount only, and the pledge is not to lapse ' then the double should be caused to be paid.

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[1] Yâjñ II. 58 (above).

[2] See Note I p. 2 Bâlambhaṭṭi Translation.

* PAGE 41.

Another meaning (is this). Where *Charitra* itself is the pledge it is called a *charitra-bandhaka.* By the word *Charitra* is expressed that unseen[1] virtue which is born of a bath in the Ganges or of (the performance of) the *Agnihotra*[2].

Where that (*i. e.* the *Charitra*) itself is pledged and money is received, then the doubled amount itself is to be returned but there is a lapse of the pledge.

In the context of the pledge another (kind of loan) is being described. **Satyankârakṛitamiti.** Whatever thing, such as ring &c. has been placed in the hands of another with a view to complete the agreement of sale and purchase, the double of that thing should be paid if the agreement is broken. Even there, if the person by whom the ring &c. is deposited himself break the contract, he should give the thing itself. If the other party commits a breach of the contract then a double of the ring &c. itself should be returned.

Yâjñavalkya Verse 62

A pledge should be restored to the debtor when he comes to redeem it, otherwise the creditor would be (liable as) a thief. If the creditor be absent, the debtor may pay the amount to (a member of) his family and take back his pledge.

Redemption of a pledge.

Mitâksharâ:—Moreover, of one who has come for redeeming his pledge by paying the amount *the pledge should be restored* (**Âdhirmoktawyâḥ**) by the creditor, and it should not be detained out of a greed for interest. *Otherwise* (**Anyathâ**) *i. e.* if it is not restored, being just in the position of *a thief* (**Stenaḥ**) he would be punishable like a thief. When, however, the creditor is absent, after placing the *amount* (**dhanaṃ**) together with interest *in the family* (**Kule**) *i. e.* in the hands of his relative, the debtor should take back his own pledge.

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[1] Mark this term. अपूर्व is sometimes expressed as अदृष्ट. It is that unseen virtue which is a relation superinduced, not before possessed, unseen but efficacious to contect the consequence with its past and remote cause and to bring about at a distant period or in another world the relative effect: All the Vedic injunctions laying down the performance of ceremonies and rituals which do not bear any direct tangible fruit derive force from their capacity to create this अपूर्व.

[2] अग्निहोत्र is the initiation and maintenance of the sacred fire and offering oblation to it. This is of two kinds नित्य ordinary, and काम्य occasional.

If, however the creditor be absent and there are no relatives of his (who are ready) to take the amount, or when the creditor is absent and the debtor wishes to pay the amount by selling the pledge, then (the question would be) what should be done? (Anticipating this) the Author says:—

Yâjñavalkya Verse 63 (1.)

Or appraised at its value at that time the pledge will remain there without interest.

Mitâksharâ;—After ascertaining the value which the pledge had at that time, he may deposit the pledge even *there* (**tatra**) *i. e.* with the creditor, without interest; it does not carry interest thereafter, till the creditor restores the pledge after taking the amount or cause to be paid to the debtor an amount equal to its value.

When it was settled at the time of (advancing) the loan that 'even if the debt were doubled, a double amount only should be taken, and the pledge should not lapse', then when the debt is boubled and the debtor is not near (the question would be) what should the creditor do? Anticipating this, the Author says:

Yâjñavalkya Verse 63. (2)

(Or the creditor) may sell (the pledge) in the presence of witnesses even without (the presence of) the debtor.

Mitâksharâ:—*Without* (**vinâ**) **the debtor (dhâraṇika)** *i. e.* when the debtor is not present, the creditor should recover the amont after *selling* (**vikrîya**) the pledge in company with witnesses and also his relatives. The word *or* (**wâ**) is intended to lay down the rule of distribution in the optional[1] case that would arise. It is in this way. When it has not been agreed at the time of (advancing) the loan that 'even if the debt were doubled, the amount only should be taken and the pledge should not lapse,' then under the text 'a pledge shall lapse when doubled &c.' the pledge shall lapse. In the case of (an express) contract, however, the rule laid down here (should be followed).

Yâjñavalkya Verse 64.

When, however, a debt under a transaction of pledge has become doubled (by the accumulation interest), then the pledge shall be returned after double the principal amount has been received (by the creditor) from the profits.

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[1] See note 4 on p. 55 above.

The Author mentions a special case of a usufructuary pledge.

Mitâkshara :— *When* (**yadâ**) the amount advanced, *has become doubled* (**dwigunî-bhûtaṃ**) *then* (**tadâ**) *from the profits* (**tadutpanne**) *i. e.* from the receipts derived from the pledge *after the pledge* (**tadâdhau**) was made and when *a double* (**dwiguṇe**) has been *received* (**pravishte**) by the creditor, the pledge should be restored by the creditor. Or if the debt has become doubled without possession (being transferred) either on account of an agreement at the beginning that 'when the pledge is delivered and the debt has been doubled you should restore the pledge' or on account of some other reason the amount has become doubled, then, after the pledge has been made over to the creditor for enjoyment, it should be restored when the profits recovered from it make up the doubled amount. If more be enjoyed, that too should be restored. This text is intended to lay down the rule that a pledge is to be enjoyed only for paying off entirely the original loan together with interest. It is called in popular language a **Kshayâdhi** (a pledge where the liability is diminished.[1])

✱ Page 42.

Where, however, it was agreed that possession of the pledge was intended only for (securing) the interest, there even if the amount has increased more than the double, the pledge will be used only until the payment of the original loan. This very thing has been made clear by **Bṛihaspatî**: "The debtor shall get back the usufructuary pledge the time for which has been matured or after paying off the principal amount; if it has exceeded, then the creditor does not get the amount. The debtor also will not get back the pledge except with mutual consent." The meaning of this text: is this. That wherein the profits are to be enjoyed is called a usufructuary mortgage or pledge. That moreover is twofold, that which is intended to pay off the original principal together with the interest, and the one to pay off interest simply. Of these also, in the case of a mortgage which is intended to pay off the original principal and the interest, the debtor shall get back the pledge when the *time for* (payment of) *it becomes matured* (*Pûrṇa kâlam*) *i. e.* when the original amount together with the principal has been received by the creditor, then the debtor shall get back the pledge. In the case of the pledge which is intended for reduction of the interest only, the debtor shall get it back after paying off the principal amount. *Sâmaka* is the same as *sama* (equal) *i. e.* equal to the original principal. The (same) Author mentions an exception to this: 'if it has exceeded without mutual consent.' *It i. e.* the pledge, *has exceeded i. e.* has transgressed the limit *i. e.* if the profits have exceeded even the interest, *then the creditor will not get the amount*. The creditor does not get the principal amount *i. e.* the debtor shall get back the pledge even without paying the original amount advanced. If, however, the pledge has not been exceeded, and is even insufficient for (paying off) the interest, then even after paying off the principal the debtor will not get back the pledge, but will get it only after paying away the balance of interest. Again the (same) Author mentions an exception to both these rules. The text ' if it has exceeded &c " has been mentioned as applying in the absence of a mutual agreement between the creditor and the debtor. With mutual consent, however, even if the pledge be exceeded, the creditor may enjoy it until the original paincipal is paid, and also (on the other hand) even if it be insufficient, the debtor gets it back by the payment of the original principal only.

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[1] Ch. the *Mortuum vadium* of English Equity.

Here ends tha Chapter on the Recovery of Debts.

Chapter IV.

The Law of Deposits.

Yájñavalkya Verse 65.

Property which being placed in a box is delivered into the hands of another without being described, is called a deposit; (and it) should be returned in the same condition (in which it was when delivered).

Upanidhi described.

Mitâksharâ:—A thing which holds the thing deposited, being different from it, is a *box Vâsana e. g.* a *Karanḍa* &c. *Property* (**dravyaṃ**) *which is placed in it* is *wâsanastha*, the particulars as to the quality and the quantity of which without being described *i. e.* mentioned, and (after it is) sealed, *is delivered* (**arpyate**) *in confidence for* safe preservation *in the hand of another* (**anyasya haste**), that property is called deposited property. As says **Nârada**: " That (property) which being under a seal is deposited without being counted or known, should be known as an **Upanidhi**; while it is known as **Nikshepa** where it is counted." *Should be returned in the same condition* (**Pratideyaṃ tathaiva tat**). The person with whom it has been deposited, should return *i. e.* restore it back to the depositor in the same condition in which it was delivered bearing the seals as before.

The Author mentions an exception to the rule as to restoration.

Yâjñavalkya Verse 66 (1.)

That, however, which has been carried away by (an act of) the king, Providedce, or thieves shall not be caused to be restored.

An exception to the rule as to restoration of an *upanidhi.*

Mitâksharâ:—*That* (tam) deposit, which was carried away by (an act of) *the king or by the Providence e. g.* by floods &c. or by *thieves* and has (thus) perished, he shall not[1] be compelled to restore. Of him with whom it was deposited, *viz*: the creditor, the property lost being that of the real owner[2] himself, provided it (*i. e.* the loss) was not brought about[3] by fraud. As says **Nârada**[4]:—" If a deposit is lost, together with the property of the depositary, the loss shall be the depostor's. The same rule shall obtain, if the loss has been caused by fate or by the king, unless the depositary should have acted fraudulently."

The Author mentions an exception to the above rule.

Yâjñavalkya Verse 66 (2)

When, however, the loss occurs after demand and non-payment[5] the depositary should be fined and compelled to pay an (amount) equal (to the deposit).

* PAGE 43.

Mitâksharâ:—When *demanded* (**mârgite**) by the owner if he do not pay then after that time even if the *loss* (**bhresho**) *i. e.* the destruction occurs on account of the king &c., the bailee should be made to pay to the owner the amount as determined by (the value of) the original, as also to the king an equal fine.

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[1] Cp. The Roman Law, where it is doubtful whether he would be liable for the loss.

[2] The word *Dhanin* (धनिन्) here stands for the debtor who is the real owner of the thing deposited. The meaning is that if a loss takes place under the conditions specified the loss is that of the depositor and not of the depositee. Cp. s. 153 of the Indian Contract Act.

[3] Mark the expression—जिह्मकारितम्. If it were the object of the Author simply to indicate direct fraud on the part of the bailee the expression जिह्मकृत would have sufficed. But the suffix कारितम् is purposely used with a view to cover the case not only of direct fraud but of any fraud whether direct or indirect to which the creditor was privy.

[4] Ch. II. 9.

[5] वृत्त is a misprint. It should be अंवृत्ते—ऽवृत्ते ।

The Author mentions a penalty for (wrongful) appropriation:

Yâjñavalkya Verse 67 (1.)

If he, (i. e. the bailee) of his own will,[1] makes a living he shall be punished, and also made to pay it with the increase.

Mitâksharâ:—He who of *his own will* (**swechchhayâ**) *i. e.* without the permission of the owner,[2] *makes a living* (**âjîvati**) *i. e.* appropriates or deals with it by lending (at interest) with a view to (make) a profit (out of it) the money[3] deposited, should be fined having regard to the extent of the appropriation and also of the profit (made by him); and he should also be made to restore (**dâpyaḥ**) the deposit together with the increase (**Sodayam**) *i. e.* in the case of an appropriation, together with interest, and in the case of a loan advanced, together with the gains realised (in the transaction). The (special) rule of interest (in such cases) has been stated by Kâtyâyana:—" A deposit, the balance of interest, (an article) sold, and (the price of) a thing purchased, if not paid on demand shall bear interest at five per cent." This rule moreover, is to be observed where there has been (complete) appropriation. In case, however, where it is lost on account of neglect or ignorance, the same (author) has mentioned a special rule *viz*:— " Where the deposit has been appropriated,[4] he should be made to pay (it back together) with interest and an equal amount if neglected; where it (the deposit) has been lost on account of ignorance, he should be made to pay a little less." Little less (Kinchinnyûnaṃ) *i. e.* less by a fourth part.

The Author extends the rules regarding a deposit, to the cases of *Yâchita* &c.,

Yâjñavalkya Verse 67 (2.)

The same law applies in the cases of Yâchita, Anvâhita, Nyâsa, Nikshepa and (such) others.

Mitâksharâ:—When, on festive occasions such as marriage &c. clothes, ornaments &c. are begged for and taken away it is (called) a

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[1] In Roman law the use of a thing deposited without the consent of the owner constituted *furtum* (See Justinian Bk. IV. I. 6.) In English law such use would not be larceny without the intent altogether to deprive the owner of his property in the deposit.

[2] The original word is द्रव्यं it may also mean a thing.

[3] *i. e.* without the consent or permission of the bailor.

[4] भक्षितं Literally means eaten or devoured; such a translation would confine the deposit to an eatable alone. The translation given above will apply in the case of all deposits.

yâchitam. Where a thing placed in the hands of one, and by him also has thereafter (*anu*) *i. e.* afterwards, been placed in the hands of another with (the direction)—"(Please) give it to the owner" it is (called) an **Anvâhitam**. What is known as **Nyâsa** is a delivery to a member of the house in the absence of the owner and without[1] being shown to him, with (the direction) "this is to be made over to the owner of the house." A delivery in his presence, however, is a **Nikshepa**. By the (use of the) word **Âdi** (*and others*) are included cases of a *deposit e. g.* (NYASTA) of gold &c. in the hands of a goldsmith &c. for preparing a bracelet &c.[2], as also of *mutual bailments*[3] (PRATINYASTA) as *e. g.* in cases where there occurs a need of each other with words "you should keep this mine, and I shall keep this yours", as says **Nârada**: "The same law applies in the case of *Yâchita*, *Anvâhita* and other such deposits, articles made over to an artist, *Nyâsa* and *Pratinyâsa* deposits." In the case of these *i. e.* the *Yâchita* &c. *this very rule i. e.* the rule in the case of a deposit, *viz.* of repayment &c., should be understood (as being applicable)

Here ends the Chapter on Deposits.

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[1] There is mistake in the print of the text on p. 43—l. 14. The correct reading is गृहस्वामिनेऽदर्शयित्वा and not गृहस्वामिने दर्शयित्वा

[2] A *nyâsa* is a secret deposit handed over to some member of the house in the absence of the owner. C/o. the *Locatis operis faciendi* of the Roman law.

[3] A *Pratinyâsa* is a mutual bailment both parties exchanging deposits with one another.

1. Ch, II. 14.

Chapter V.

Of the Witnessess.

It has been said above[1] that 'evidence has been laid down to consist of a writing, possession and witnesses.' Of these, (the law of) possession has been examined. Now begins an examination of the nature of (the law of) witnesses. One becomes a (proper) witness by his actually having seen or heard (a thing), as says **Manu**[2]:— "Witness Evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness)." Such a witness moreover is twofold—appointed and unappointed. When marked as a witness he is called an appointed, and when not marked an unappointed. Of these the appointed is of five[3] kinds and the unappointed of six, and thus these witnesses are of eleven kinds. As says **Nârada**[4]:— "Eleven descriptions of witnesses are distinguished in law by the learned. Five of them are known as appointed, and the other Six as unappointed." Their (further) classification has also been indicated by the same **Author**[5]:—"A subscribing witness, one who has been reminded, a casual witness, a secret witness, an indirect witness, these are the five sorts of appointed witnesses."

Characteristics of witness.

Kinds of witnesses.

* PAGE 44.

Kâtyâyana has described the characteristies of the subscribing and other witnesses (thus): "one who was invited by the claimant[6] himself and who has been entered into the document, is called a subscribing witness, and who has been made to remember without the document (being shown to him)." The same **Author** has explained the meaning of the expression 'Made to remember without the document' (smâritaḥ patrakâdrite) thus: "He, moreover, who for the purpose of establishing a transaction, is reminded again and again by the claimant after (his) having seen (the document evidencing) the transaction is called here a witness '*who has been reminded.*' He, however, who having arrived by chance, has been made (to subscribe as) a witness is a *casual witness*. The same author has pointed out a distinction among these witnesses even when they have not subscribed to the document: " One (specially) called on the occasion, and one who had gone (merely) by chance-these two (kinds of) witnesses can establish the claim of the plaintiff–although they are not entered into the document." Similarly, " He is called a *secret witness* who while remaining concealed, has been made to hear distinctly the words of the defendant, by the plaintiff for establishing his claim." And " He is called an *Indirect witness* who, either from direct or hearsay knowledge corroborates broadly the statements of (actual) witnesses." Nârada[1] has also pointed out the six kinds of the unappointed (witnesses): " The village, a judge, a king, one commissioned[2] for (special) duties, and one deputed by the claimant. In family quarrels, members of the family shall (also) be witnesses." The mention of 'a judge' is indicative by implication also of 'a writer' and 'a *sabhya*[3].' The writer, the judge, the *sabhyâs*, have in order, been laid down as witnesses when the case is under investigation by the king."

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[1] Yâjn. II. Ver. 22, p. 38 ll. 9-10.

[2] Ch. VIII. 74.

[3] Here there is an error in the print in the Sanskrit text on p. 43 l. 25. It should be तत्र कृतः पञ्चविधः अकृतश्च षड्विध, इत्येकादशविधः

[4] Ch. I. 149.

[5] Nârada Ch. I. 150.

[6] अर्थी—the party who sets up a claim.

Of what kind and how many will such witnesses be ? (Anticipating such a question) the Author says.

Yâjñavalkya Verses 68, 69.

Men devoted to religious austerities, men liberally disposed, men sprung from high families, truthful men, men (chiefly) devoted to religious observances, straightforward men, men blessed with sons and men possessed of wealth (68).

(are competent) witnesses, (provided they are) not less than three, and devoted to the performance of S'rauta[4] and Smârta rites, each respectively according to their caste or class or all for all (castes and classes).

Mitâksharâ :—*Men devoted to religious austerities* (**tapaswinaḥ**) *i. e.* habitually devoted &c. *Liberally disposed* (**dânas'îlâḥ**) *i. e.* devoted to the distribution of alms. **Kulînâḥ** *i. e.* born in high families. *Truthful* (**satyawâdinaḥ**) *i. e.* having a character for truth-speaking.

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[1] Ch. I. 151–152.

[2] 'कार्येष्वभ्यन्तरो यः' is another reading & Dr. Jolly translates it as " one acquainted with the affairs of the two parties."

[3] See p. 2 n. 5 above.

[4] Śrauta and Smârta rites are those laid down in the Śruti and the Smriti. See Yâjñayalkya Achnra Verse 97 and Vijnaneswares prefactory remarks thereon.

Devoted to religious observances (**dharmapradhânâḥ**) and not to observances actuated by *Artha*[1] and *Kâma*. *straitforward* (**ṛijavaḥ**) not crooked. *Blessed with sons* (**putravantaḥ**) *i. e.* with living sons. *Possessed of wealth* (**dhanânvitâḥ**) *i. e.* possessed of considerable wealth such as gold &c. *Devoted to the performance* of śrauta *and* smârta *rites* (**śrautasmârtakriy-parâḥ**) *i. e.* devoted to the performance of ordinary and special rites. Men of this description, not being less than three, are (accepted as) competent witnesses. Those than whom three will not be below *i. e.* less, are *men not less than three* (**tryavarâḥ**) *i. e.* men who are not on this side of (the number) three. As for more than this, their number would be according to the requirements. Not going outside the caste is 'according to caste' (**Yathâjâti**). Castes such as *Mûrdhâvsaikta*[2] and others born of descending[3] or ascending unions. Among these, for the *mûrdhâvasiktas*, the witnesses shall be *mûrdhâvasiktas*. The same (rule) should be observed with reference to *Ambashthâs* and others. Not going beyond the class is 'according to the class.' *Classes*, such as Brâhmans and others. Here, in cases of Bráhmans, Brahmans alone of the specified description and number can be witnesses. The same (rule) should be observed in the case of *Kshatriyâs* and others. Similarly, in cases concerning women, women alone can give evidence. As says **Mauu**[4]; "Women should give evidence for women". In the absence of persons of the same caste or class all *i. e.* the *Murdhâvasikta* and *Brâhmans* &c, will become (proper) witnesses in the cases of all *Murdhâvasiktas* &c, and *Baâhmans* and others.

The number of Witnesses.

In the absence of witnesses of the aforesaid description, in order to establish the rule that others for whom there is no objection may be (accepted as) witnesses it is necessary to mention those who are not (fit to be) witnesses. These have been pointed out by **Nârada**[5] as of five sorts:- "The incompetent witnesses, too, have in law[6] books been mentioned by the learned to be of five sorts: (*viz* witnesses who are incompetent) on account of a (special) text of law, on account of depravity, of contradiction, on account of a voluntary deposition, or of an intervening death." It may be asked what witnesses again are incompetent under a special text? So the (same) author[1] says, "Learned Brâhmans, hermits, aged persons as also asecetics and others, are incompetent (as) witnesses under a special text of law; and no (special[2]) reason is given for this (rule)." Hermits *i. e.* a *Wânaprasthas*[3]. By the term **Âdi** (*and others*) are included those who have any dispute (at law) with the father or (such) others. As says **S'ankha**: "Persons having a dispute (at law) with the father, resident students at the preceptor's home, ascetics, hermits, and the *Nirgranthas*[4] are incompetent (to be) witnesses." Persons unfit to be witnesses *on account of depravity* have been pointed out (by him[5]) thus: "Theives, robbers, dangerous characters, gamblers, and rogues[6], are incompetent (as) witnesses on account of depravity; there is no truth (to be found) in them." *Dangerous characters* (chaṇḍâḥ) *i. e.* of excitable temper. *Gamblers i. e.* those engaging (themselves) in gambling. The same Author[7] has pointed out the nature of witnesses incompetent on account of contradiction: "Should one of the witnesses entered on record or summoned by a party depose to a falsebord, all of them become incompetent (as) witnesses on account of a Contradiction." Similarly the nature of a *Swayamukti* or volunteer witness has been described[8]. "A volunteer witness is he, who wtihout being appointed to be a witness, comes of his own accord to make a statement, (and) is termed a spy in the law-books; he does not deserve to bear testimony." The characteristices of a witness (rendered) incompetent on account of intervening decease have been given thus:[9]—"when a claim has to to be proved, and the claimant is not in existence for whom can (any person) bear testimoney? And so such a person is an incompetent witness by reason of intervening decease." *i. e.* either by the plaintiff or the defendant,—who has to prove a (particular) Claim (by informing his witness) thus 'you shall be my witness for this claim' when such a one—*i. e.* either plaintiff or the defendant is not in existence *i. e.* is dead, and the claim has not been proved, in what claim or for whose behalf should one bear testimony as a witness? and thus one ceases to be a witness, on account of intervening decease. Where, however, the sons have been told by their father at the time of death or even while he was in (sound) health, that in such and such a claim, such and such persons will be witnesses, in such a case one can be a compentent witness even though there has been an intervening decease. As says **Nârada:** "A witness becomes incompetent on account of intervening decease unless he has been named by the dying man." And also, "Where a witness has been named by one while (perfectly) free from any disease in a claim which is in accordance with the law, even if the claimant die, the witness (still) continues to be (a competent) witness in claims such as for the six kinds of property *viz. Anvâhita* and others.

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[1] The three *Purushârthâs*—ends and aims of all worldly activity—are *Dharma*, *Artha* and *Kâma*, the securing of religious, pecuniary and personal advantages.

[2] मूर्धावसिक्त (Murdhâvasikta)—see the 'evolution of castes' as given in Yâjña. Achârya. Verse 90-96. The issue begotten by a Brâhmana on a *Kshátriya* wife is called *Murdhávasikta*. Yajn. Achar. 91.

[3] अनुलोमज *i. e.* the issue of the union of the male of a higher class with the female of a lower class. These have been indicated in Verses 91 and 92 of the Achârâdhyâya of Yâjnavalkya. The contrary of this term is प्रतिलोमज (pratilomaja) the issue of an ascending union *i. e.* the Union of the male of a lower order with the females from higher orders. See Verses (93-95) Do. Do.

[4] Ch, VIII 68.

[5] Ch: I. 157.

[6] शास्त्रेऽस्मिन्' is another reading. &c, "In this law book"

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[1] *Nârada* Ch. I. 158.

[2] 'The reason why the persons referred to in this paragraph are excluded seems to lie in their entire renunciation of earthly interests, which render them unfit to appear in a court of justice. Cf. Manu 'VIII 65'—*Dr. Jolly*.

[3] One in the third stage of his life-the four stages being ब्रह्मचर्य, गार्हस्थ्य, वानप्रस्थ & संन्यास.

[4] निर्ग्रंथ (Nirgrantha)—*freed form* all *ties* or hindrances—a saint or devotee who has renounced all wordly attachments and wanders about naked and lives as a hermit. The term has also the following meanings:—an idiot a fool, or a gambler. This term is also used at times in reference to Jain or Budhist monks—a fact evidencing a time when the attitude towrds this sect was not of a friendly character.

[5] Nârada Ch. I. 159.

[6] वधकाः is another reading: assassins.

[7] This text is assigned to *Kâtyâyana* by the Author of व्यवहारमयूख

[8] *Nârada* 1. 161.

[9] Nârada Ch. I. 162.

The Author mentions those who are incompetant witnessess.

Yâjñavalkya Verses 70, 71.

A woman, a minor, an old man, a rogue, an intoxicated person, one infatuated, one against whom an accusation has been brought, a stage-dancer, a heretic, a forger, one deformed (70.)

One degraded, a relative, one having an interest in the subject-matter (of the suit), an ally, an enemy, a thief, a desperado, one who has been found guilty, an outcast, and (the like) others are incompetent witnesses.

Mitâksharâ:— *A woman* **(Strî)** is well known. *A minor* **(Bâlaḥ)** one who has not attained (the age of) capacity. *An old man* **(Vṛiddhaḥ)** one who is above eighty. The use of the term *vṛiddha* is indicative also of others *e. g.* learned Brâhmaṇs &c. for whom there a (special) prohibition in the texts.[1] *A rogue* **(Kitavaḥ)** one who gambles with the dice. *An intoxicated person* **(Mattaḥ)** *i. e.* by drinking &c. *One infatuated* **(unmattaḥ)** *i. e.* one possessed by an evil spirit. *One against whom an accusation is brought* **(Abhis'astaḥ)** *i. e.* against whom a charge is pending, such as of killing a Brâhmaṇa &c. A *stage-dancer* **(rangâvatârî)** a professional actor. *Heretics* **(pâkhaṇḍinaḥ)** such as the *Nirgranthas*,[2] and others. *A forger* **kûṭakṛit** *i. e.* one who makes false documents &c. *One deformed* **(vikalen-**

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[1] *e. g.* Manu. VIII. 64–67. Nârada. I. 157–171.

[2] Jain or Budhist months see note 10 p. 105. above.

driyaḥ) *i. e.* without an ear &c. *One degraded* (patitaḥ) such as a Brâhmaṇa-killer &c. *A relative* (Âptaḥ) *i. e.* a friendly relative. *One having an interest in the subject-matter of the suit* (arthasambandhî) *i. e.* the subject-matter of the suit which is under investigation. *An ally* (sahâyaḥ) *i. e.* a partner. *An enemy* (ripuḥ), an opponent. *A thief* (taskaraḥ) a robber. *A desperado* (sâhasî) one menacing (others) by the (sheer) force of his strength. *One who has been found guilty* (drishta-doshaḥ) *i. e.* who has been found out as having told a lie. *An outcast* (nirdhûtaḥ), one abandoned by his relatives.

By the use of the term *Âdya* (and others) are also included others who have been mentioned in other *Smṛitis* as incompetent witnesses on account of depravity, contradiction, volunteering a deposition, or of intervening decease. These (as also) a woman, a minor &c. are not fit to be witnesses.

* PAGE 46.

The Author mentions an exception to the text " witnesses are known to be not less than three."[1]

Yâjñavalkya Verse 72 (1).

With the consent of both parties, even one person becomes (a sufficient) witness, if he is conversant with his duties.

About a witness sole.

Mitâksharâ:— A man is said to be conversant with his duties (**dharmavit**) who performs the ordinary and Special rites after (properly) understanding them. Such a one, even if alone, is a (sufficient) witness, if there is *consent of both parties* (**ubhayânumataḥ**). By the force of the word *even* (**api**) even two (would do). Although under the text[1]. ' Devoted to the performance of the *Śrautâ* and the *Smârti* rites', the (condition regarding the) observation of duties holds equally even in the case of more than three persons, still these are admissible as (competant) witnesses even in the absence of a consent from both sides, while a single witness or two are accepted as sufficient only with the consent of both (parties), and thus the use of the expression (*tryavara*) ' not less than three ' has a meaning.

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1. Verse 69 above p. 103.

The Author mentions an exception to the text,[1] "men devoted to religions austerities, men liberally disposed &c."

Yâjñavalkya Verse 72 (2.)

In the cases of adultery, theft, insult, and a Sâhasa (a heinous offence), any person may be a witness.

In cases of theft and other procedings even persons (specially) prohibted may be accepted as wttnesses.

Mitâksharâ:—*Adultery*—(**Sangrahaṇa**) and other offences the characteristics of which will be mentioned later on.[2] In these cases all persons, whether prohibitted by special text or wanting in the special qualities of austerities, are competent. But here also, the persons who are incapacitated from being witnesses on account ot depravity, of contradiction or on account of a volunteered statement, are not acceptable as witnesses, the cause (of incapacity) *viz.* the absence of (truthfulness) &c. being also applicable here. Although on account of the text[3]: "manslaughter, robbery, an indecelent assault upon another man's wife, and the two species of insult, such are the four kinds of Heinous offences," still, these very offences become heinous when they are committed in public (by the offender) in mere brute force; while when committed in secret they are designated by the words adultery &c. and hence they have been distinctly mentioned in addition to the *Sâhasa* (or Heinous offences).

The Author describes the affirmation of the witnesses.

Yâjñavalkya Verse 73. (1)

In the presence of the plaintiff and the defendant the witnesses should be affirmed (in the following[4] form)

Mitâsharâ:—In the presence of the plaintiff and the defendant, *the witnesses* (**Sâkshiṇaḥ**) when gathered together—under the text of **Gautama**[5]: "They (*i.e.* the witnesses) should not speak singly or without being asked."—*should be affirmed* (**srâvayet**) as follows. There also a special rule has been laid down by **Kâtyâyana.** "The witnesses being assembled in the middle of the court-room, in the presence of the plaintiff and the defendant the judge

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1. Yâjñ. II. 69. p. 103. above.
2. In this same Book of Yâjñavalkya Smriti.
3. Of Nârada. ch. xII. 2.
4. viz: vesses 73 (2), 74 I 75, further on.
5. Ch. XIII. 5.

should examine them after assuring them in the manner as laid down in the following text.—In the forenoon, the judge, being purifield, should ask the *dvijâs*, their faces being turned towards the North or the East, to give true evidence, in the presence of (the image of) God and the Brâhmaṇs. After having summoned all the witnesses and bound them down firmly by an oath, he (the judge) should examine them severally, (all of them) being men of established conduct and acquainted with the facts (of the case) in dispute."

Moreover, a rule has been laid down by **Manu**[1] for affirming the Brâhmaṇas and others. " A Brâhmaṇa should be required to swear by (the merits generated by his) truth, a Kshatriya by (the means of) his conveyance and by his weapons, a Vaisya by his kine, grain and gold, and a S'ûrada by (imprecating on his own head the guilt of) all *sins*. A Bráhmaṇa should be made to swear with the words—' If you tell an untruth, all (merits arising from) your truth will perish ', a Kshatriya—' Your (means of) conveyance and weapons will be futile '.; a Vaiśya—' your kine, grain and gold will become useless ' and a S'ûdra—' if you tell an untruth all the sins will accrue to you '. Here also, an exception has been mentioned by the same[2] sage: " The *Viprâs* who carry on the business of cowherds, traders, mechanics, actors, menial servants or usurers, the judge should treat as S'ûdras ". The use of the term *Vipra* is indicative of Kshatriya and Vaiśya. *Actors* (Kuśîlavâḥ) *i. e.* singers. When (the plea of) a defect in a witness has been raised by the defendant, the decision should be arrived at in the same manner as is done in the case of defects which are capable of being determined upon by actual sight such as minority &c. In the case, however, of such as are not capable of being so determined, the point should be decided by reference to the evidence of witnesses and the evidence of general repute and not by that of other witnesses; thus there is no incongruity. If the defendant, after having set up a defect in the witnesses. is not able to substantiate it, then he should be punished according to the nature of the defect set up. If, however, he establishes the defect then those persons will not be admitted as witnesses. As has been said[3]: "If he (*i. e.* the defendant) do not establish **clearly** the defect in the witnesses, he should be compelled to pay a fine; if the defect is established the witnesses should be rejected as persons unfit to be witnesses". And when after all the witnesses intended to be cited by the plaintiff have been found to be defective, and the plaintiff cannot prove his case by (any) other evidence then he becomes defeated; *vide* the text.[4]—" When defeated, he should be compelled to pay a fine as laid down by the law, if

* PAGE 47.

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1. Ch. VIII. 113.
2. Manu Ch. VIII. 102.
3. By Vyâsa.
4. Also of Vyasâ.

the plaintiff is disposed to be indifferent in (the matter of) establishing the truthfulness of his witnesses. " The meaning is that if he is desirous (of establishing his case), he should have recourse to other evidence.

The Author explains how a witness may be made to swear.

Yâjñavalkya Verse 73 (2), 74, 75.

" Those regions (which are) meant for the perpetrators of sins and of baser[1] sins, as also those worlds (which are) meant for the incendiaries and the slayers of women and children, to all these shall he go who gives false evidence. 73 (2), 74.

" Whatever merit you have secured by (your good deeds in) hundreds of previous lives, know that all that (merit) will be his whose defeat you will bring about (by Speaking) falsely (75).

Mitâksharâ:—The meaning is that those regions which are intended for the perpetrators of sins, accessory and baser ones, as also for the incendiaries and the murderers of women and children, to all these shall he go who gives false evidence. Similarly, whatever merit may have been acquired through hundreds of previous births, all that goes to him who is defeated on account of your (having given) false evidence. The context is that thus a witness should be affirmed. This (latter) moreover should be understood as applicable to S'ûdrâs as, the affirmation by all the sins as laid down in the text[2] —" and a S'ûdra by all the *pâtakâs* "—has also been made applicable to the *dwijas* who carry on the occupation of cowherds &c. as has been laid down in the text[3]: " (dwijâs) engaging themselves as cowherds, grocers &c." The transference to another of the merit acquired through innumerable births, as also the accrual of the results of baser and other sins is not deducible from untruth alone. Thus this text is intended merely as a means of inspiring awe and fear (in the defendant); as says **Nârada:**[4] " By ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, let him inspire them with deep awe ".

If, however the witnesses after they are sworn, do not speak at all what should be done ? Anticipating this question the Author says:—

Yâjñavalkya Verse 76.

A person not giving evidence should be made to pay, by the king, the entire debt with the addition of a tenth thereto on the forty-sixth day.

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[1] महापातकs. these are:ब्रम्हहत्या सुरापानं स्तेयं गुर्वंगनागमः । महांति पातकान्याहुस्तत्संसर्गश्च पञ्चमम् ॥

[2] Manu ch. VIII. 88, 113.

[3] Manu ch. VIII. 102.

[4] Ch. I. 200.

On a refusal to give evidence the debt should be paid.

Mitâksharâ:—He, who having agreed to give evidence as a witness, does not, after having been affirmed, speak anything should be made to pay by the king, the entire debt (*i. e.*) together with interest, to the creditor. *With the addition of a tenth* (**Sadas'abandhakaṃ**) together with a tenth part. The tenth part, moreover, becomes the king's, (property); for it has (already) been laid[1] down above that "a debtor should be made to pay by the king to himself ten per cent of the amount recovered." This (rule), however, should be understood to be enforceable after the 46th day is reached. One speaking before that limit should not be made to pay. This rule, again, applies to those who are not affected by any of the calamities such as a disease &c. As says **manu**[2] "A man who, without being ill, does not give evidence in cases of loan transactions and the like within three fortnights shall become responsible for the whole debt together with a tenth part of the whole." *Without being ill* is indicative by implication (also) of the absence of (other) calamities caused by the king or Fate.

For him, however, who though (fully) knowing everything does not agree to give evidence through wickedness, the Author lays down a rule.

Yâjñavalkya Verse 77.

That basest of human beings, who though knowing (the facts of the case), does not offer (to give) evidence as a witness is equal to a false witness in point of sins and (liability to) punishment.

* PAGE 48.

Mitâksharâ:—Moreover, *that basest of human beings* (**Yaḥ narâdhamaḥ**) even *though* well-*knowing* (**Jânaṇ**) the (facts regarding the) point in dispute *does not offer to give evidence as a witness* (**Sâkshyaṃ na dadâti**) *i. e.* does not agree to give, *is regarded as equal to false* witnesses (**Kûṭasâkshiṇâm tulyaḥ**) in point of sins and the punishment.

The punishment for false witnesses will be[3] mentioned (hereafter). After punishing the false witnesses the suit should be commenced again. And even if a suit is decided, it should be cancelled if the evidence comes to be known to be false. As says Manu:[4] "In every suit where false evidence has been given, the judgement in each such (suit) stands cancelled, and whatever has been done (in pursuance of it) is (regarded as) undone."

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[1] Yâjñ. II. 42. p. 71. ll. 8-9 above.

[2] Ch. VIII. 107.

[3] Yâjn. II. 81 p. 117. ll. 22-23.

[4] Ch. VIII. 117.

How should the decision be given when the witnesses disagree? So the Author says:—

Yâjñavalkya Verse 78.

In (the case of) a disagreement, the testimony of the majority prevails; and if the witnesses are equaly divided the evidence of the virtuous; and if the virtuous disagree, the evidence of those who are most virtuous shonld be accepted (as conclusive).

Mitâksharâ:— In the case of a *disagreement* (**Dwaidhe**)*i. e.* conflict between witnesses, the *testimony of the majority* (**bahûnâṃ vachanam**) *should be accepted* (**Grâhyaṃ**). When the disagreement is between those who are equal *i. e.* equal in number the testimony of those who are virtuous should be accepted. When, moreover, the disagreement happens to be even among the virtuous, then the testimony of those should be accepted who are most virtuous (**guṇavattamâḥ**) *i. e.* accomplished by learning and study and by the observance thereof, as also who are endowed with wealth, male issue &c. Where, however, the virtuous are few and the others many, the testimony of the virtuous alone should be accepted *vide* the text.[1] "With the consent of both, even one person is (enough as) a witness, if he knows the *Dharma* ". The prominence has been given to the superiority of virtues. What however has been said about the incompetency of persons on account of a contradiction, applies to a case where no special preference can be admitted on account of the general equality of all.

Rule in the case of a conflict among witnesses.

What testimony of the witnesses leads to success and what to a defeat? (Anticipating this inquiry) the Author says:—

Yâjñavalkya Verse 79.

He, whose witnesses depose to the truth of (the allegations in) the plaint, shall become successful; (and) sure defeat will be his whose witnesses contradict the plaint.

Mitâksharâ:—He *whose*—(**yasya**) *i. e.* of the plaintiff, *plaint* (**pra, tijñâṃ**) containing the particulars about the subject-matter, its kind, measure &c., the *witnesses* (**sâkshiṇaḥ**) depose to *as true* (**satyâṃ**) *e. g.* with the words. "This is true, we know", becomes *successful* (**jayee**). Of a plaintiff, however, whose plaint they *contradict* (**anyathâ**) *i. e.* testify in a contradictory manner *e. g.* (with the words) 'This is false' his *defeat* (**parâjayaḥ**) will be *sure* (**dhruvaḥ**) *i. e.* certain. Where, however, on account

Success or defeat through witnesses.

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[1] Yâjñ. II. 72 above p. 10. ll. 19.

of forgetfulness or other (cause) the witnesses do not substantiate either the affirmation or the negation of the allegations in the plaint, in such a case the decision should be given by (recourse to) other (means of) proof; and the king should not question the witnesses again and again. Only such testimony should be recorded as was given (by the witnesses) spontaneously. As has been said[1]: "Such evidence of these (the witnesses) should be admitted as may be spontaneous and free from fault; after, however, the witnesses have made their declarations as above, they should not be questioned again and again by the king ".

The Author mentions an exception to the rule[2]: "sure defeat will be his whose witnesses contradict the plaint".

Yâjñavalkya Verse 80.

Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false.

Exception to the above.

Mitâksharâ:—When evidence has been given by *witnesses* (**sâkshibhiḥ**) qualified as (stated) above, *in the matter under consideration* (**sâkshye**) *i. e.* the allegations made by himself (and) which is contradictory to the allegations in the plaint, if *others* (**yadyannye**) *more qualified* (**guṇavattamâḥ**) than the first *or double in number* (**dwiguṇâ wâ**) depose *otherwise* (**anyathâ**) *i. e.* in support of the allegations in the plaint, then the **first witnesses (pûrva sâkshinaḥ)** become *false* (**kûtâḥ**) *i. e.* perjurers.

An objection—Indeed this is improper. For, after the evidence was given by witnesses who were fixed upon as the means of proof after their competency was determined by the plaintiff the defendant and the presiding officer of the court, to seek after another mode of proof would involve the fault of incongruity as also per the text of **Nârada.**[3] "When a lawsuit has been decided, evidence becomes useless, whether it consist of documents or of witnesses, if such evidence was not announced at a former stage of the trial. As the (fertilizing) capacity of the rainy season is thrown away on crops which have ripened, even so evidence becomes useless in suits which have been decided.

* PAGE 49.

The answer—When the plaintiff relying on his own internal consciousness about (the truth of) the allegations in the plaint, and thus regarding as unreliable the testimony of witnesses who although till then are undiscovered as vicious, yet as it contradicted the plaint, he conceives a defect even in (his own) witnesses, then in such a case, how can other evidence be excluded? It has also been said[1]: "He whose sense of perception is faulty, as also he who has been once found to have told a lie, that man indeed is a bad witness" *e. g.* although a defect in an organ such as the eye &c. has not been (actually) discovered, still as such a defect in the organ is (still) inferred on the strength of the knowledge thereof obtained by the disagreement with the plaint, so here also on the strength of the rule that the evidence of witnesses should be tested by means other than the mere examination of witnesses, **Kâtyâyana** has said "The truth of the words uttered by witnesses should be examined with the help of the councillors."

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[1] By *Kâtyâyana* (see Balambhatti) and *Manu.*

[2] Contained in the last verse No. 79 p. 112.

[3] Ch. I. 62–63.

"When evidence is free from (all) faults then (alone) their words should be tested by the principles of justice; and a plaint which has been found to be correct by comparison with testimony (so) refined, is considered as a true plaint; this is the (established) rule. When *Evidence* in the form of[2] witnesses is (found to be) free from all faults by referrence to the rule[3]: "nor those interested in the suit, nor friends &c." then (only) *their words i. e.* the words of the witnesses[4] should be tested. And the testing of the words is to be by establishing the truth of the plaint vide the text: "A clause is refined by (establishing its) truth." From the evidence thus refined, and from the words thus tested whichever (allegation in the) plaint is established, that is considered as a true plaint-having been found as such. This is the rule *i. e.* the rule of the lawyers. The meaning is that the evidence is considered as true in the absence of any data for inferring a fault in the senses (of perception).

Another objection.—After having discussed the witnesses cited as evidence by the plaintiff himself, how can other evidence be accepted as proof?. **The Answer**—There is no error here. Since by mentioning the rule: "He, who having adduced stronger proof resorts to a weaker one, should not be allowed by the offiicers of the court to resort to it again when once the case has been determined[5]" **Kâtyâyana** has indicated the admission of another proof before yet the success in the case is determined, since fresh evidence is prohibited at a period subsequent to the determination of success in a case. By stating the rule:[6] "When a lawsuit has once been decided evidence becomes useless" **Nârada** als has interdicted fresh evidence only after the determination of the succcss in a suit and not even before. Therefore it has been established that fresh evidence may be admitted on behalf of a party who is dissatisfied with his evidence even after 'evidence was given' by witnesses.

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[1] By Gautama (see Bâlambhatti)

[2] *i. e.* New witnesses.

[3] Narada ch. I. 177. The full text of this rule is as follows:

नार्थसंबंधिनो नाप्ता न सहाया न वैरिणः । न दृष्टदोषाः प्रष्टव्याः साक्षिणः प्रतिदूषिता, ॥ १७७.

Tr: Those must not be examined as witnesses who are interested in the suit, nor friends nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin)".

[4] *i. e.* Witnesses first examined.

[5] Lit. when once success in the case has been declared.

[6] Ch. I. 62.

In such a state of things if there are witnesses who are more qualified than, or are twice in number to those whose evidence was recorded, or if those cited before are not near (and available) then these latter alone should be accepted as reliable evidence, the rule contained in the text[1]: "Whatever witnesses declare quite naturally, that must be received as evidence acceptable in trials" having a universal application in all suits. Also *vide* the text of **Nârada**[2]: "When a lawsuit has been decided evidence becomes useless whether it consist of a document or witnesses, unless it was announced at a former stage of the trial". If, however, those who had been indicated at the earlier stage are not likely to be available, witnesses of a like description should be accepted even though they were not mentioned before, and not an ordeal, *vide* the text:[3] "When witnesses are available a wise man should avoid divine evidence." In the absence of these an ordeal may be admitted as evidence. After this the plaintiff must not be allowed to adduce fresh evidence even though he be dissatisfied, as *per* the text of **Manu**, but the trial should be concluded.

Where, however, the defendant, regarding the witnesses to be faulty on account of their disagreement with his own internal consciousness, is dissatisfied with the witnesses, in such a case there being no scope for a defendant to adduce evidence, the (veracity of) witnesses should be tested by the occurrance of any calamity, either on account of the King or Fate, within the interval of seven days. In such a case, moreover, if they are found to be vicious they should be made to pay the amount of the loan in dispute, and should also be punished having regard to the amount of the claim in dispute. If, however, no fault is found, the defendant should rest satisfied with that much, as says **Manu**[4]: "He, to whom, within seven days of his having given evidence, happens (a calamity in the form of) a sickness, a fire or the death of a relative, shall be made to pay the debt and a fine". This moreover, should be observed as an exception to the rule[5] "He, whose witnesses depose to the truth of a plaint shall be successful" in referrence to the defendants.

Some explain the text "even after witnesses have given evidence &c" as meaning that, after the witnesses cited by the plaintiff had deposed favourably to the plaintiff, if the defendant by means of more virtuous or a double number of witnesses establishes the opposite of * PAGE 50. what was said by the first witnesses, then the witnesses of the plaintiff come to be considered as false. This is wrong ; because it would be improper for a defendant (to be called upon) to adduce evidence. Because, a plaintiffis he who affirms a point (which is) to be proved; (and) his opponent-who affirms the *negation* thereof-is the defendant. Here, therefore, the (necessity of the) proof of the *negation* having a dependence relative upon the proof of the *affirmation*, while (the proof of) an *affirmation* being independent of that of a *negation*, it is proper that the affirmation should be (considered as) the *Sâdhya*[1]; by its very nature a *negation* is impossible to be ascertained by witnesses and other (means proof) and hence it is proper that the burden should lie upon the plaintiff alone.

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[1] Of Manu ch. VIII. 78.

[2] Ch. I. 62.

[3] Of Manu.

[4] Manu Ch. VIII. 108.

[5] Of Yâjnyavalkya II. 79, p. 112, ll. 27-29.

Moreover, it is a universal rule that the burden of proof is regulated in accordance with (the nature of) the answer: " When *res judicata* and ' special exception ' are set up as a combined plea the defendant should exhibit proof; in (the case of) the plea of denial the plaintiff (should exhibit it). In the caae of an admission, however, it does not become necessary (at all). " Never, however, will the burden lie on both in the same trial *vide* the text[2]. " In one suit the burden of proof cannot lie on two litigants ". Therefore the suggestion[3] that defendant's witnesses should (be allowed to) testify when they are more qualified or double (in number) is improper.

It may be said again[4] (granting all this) where two persons both coming as plaintiffs, each saying ' I got this as inheritance from a (deceased) relative ' ' I got this as inheritance from a (deceased) relative' without having ascertained the priority (of their claim) as to the point of time, in such a case when there are witnesses on both sides, a question might arise as to whose witnesses should be accepted, having regard to the text[5]. " When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim should be heard ", the rule deducible would be that the witnesses should be examined for him who first appears[1] as a complainant? And the procedure (contained in the text) "Even after witnesses have given evidence &c" is intended as an exception to it. And therefore when (in such a case) the witnesses of both the prior and second complainant are equal in merit and number, the witnesses of the first complainant alone should be examined; where, however, the witnesses for the later complainant are more meritorious or are double in number, then the witnesses for the defendant should be examined. And thus there would be no necessity for making a *negation* a *sâdhya*, as both parties here set up an affirmative case and as also the answer is of a kind different from the four varieties[2] of an answer and thus there is no (necessity for the) adjustment[3] of the burden of proof. And as even according to the *Siddhântiṇ* the same plaintiff may be put to a double proof in the same trial, so there would be no contradiction in the plaintiff and the defendant being put to two proofs[4] (respectively).

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[1] Lit. that which is to be established;-a point to be proved. The meaning is that the burden of proof lies upon him who asserts that a certain thing exists. This is in a line with the first elementary principle of the Burden of proof: cf. Ch. VII. Ss. 101. 104 of the Indian Evidence Act.

[2] Of Kâtyâyana See p. 16. l. 5 above

[3] Viz. as to the meaning of this text of Yâjnavalkya.

[4] It may be noticed that this objection is raised after the refutation of the last objection, by reference to the text न चैकस्मिन्विवादे &c. The objector says-admitting this to be correct, what if both the litigants are placed in the position of a plaintiff? In such a case, he maintains that this text should apply; but this too has been refuted in the end by Vijnânesvara.

[5] Of Nârada.

(To this the answer is):—Even this the great teacher[5] does not admit. Such an import is not obtainable either from the express or implied meaning of the term *even* (*api*) in the text: "*Even* after the witnesses have given evidence". So enough of prolixity.

False witnesses have been indicated. The Author (now) mentions the penalty for these.

Yâjñavalkya Verse 81.

The Suborner as well as the (false) witnesses should be separately punished with a fine double the amount in despute. A Brâhmaṇa, it has been laid down, should be banished.

Mitâksharâ:—He who by pecuniary bribes &c, prepares false witnesses is (called) a *subowner* (**Kûṭakṛit**). Those *witnesses* also who are false, should each separately be punished with a *fine double the amount* (**daṇḍaṃ dwiguṇaṃ**) *in dispute* (**vîvâdât**) *i. e.* that which has been prescribed for (the party suffering) a defeat in the case of a defeat in the suit. A **Brâhmaṇa**, however, should be *banished* (**Vivâsyaḥ**), expelled from the kingdom, (and) not fined.

Punishment for false witnesses.

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[1] Mark the gloss of बाळंभट्टी 'प्राप्तिपूर्वत्वाज्ञाऽनेपि निवेदनपूर्वत्वज्ञानेन तत्र निर्णयः इति'

[2] See p. 14 above.

[3] Cf. विषयव्यवस्था See note 4 on p. 35 above.

[4] Here ends the objection.

[5] आचार्य *i. e.* विश्वरूपाचार्य.

This rule, mroeover, is to be observed in cases where special motives such as covetousness &c, do not appear, as also when the witnesses are not habituated (to perjury). When, however, a special motive such as covetousness is apparent or the party is habituated, the rule has been laid down by **Manu**[1]. " (He who commits perjury) through covetousness shall be fined one thousand (paṇas); (he who does it) through confusion[2] (should be punished) in the (punishment laid down for the) lowest *Sâhasa*; (if he does it) through fear &c. the punishment should be (the same as for) the two middle (Sâhasas,) and (if he does it) through (feelings of) friendship, four times the amount of the lowest *Sâhasa* [120]. (He who does it, through love shall pay ten times the amount for the lowest *Sâhasa*, but) he who does it, through wrath three times the last (of the *Sâhasas*); (he who does it) through ignorance full two hundred, but (he who does it) through childishness one hundred (paṇas) [121]." Here, *covetousness* (Lobhaḥ)—greed for money: *Confusion* (mohaḥ)—a confused impression *Fear* (Bhayaṃ)—acute fear. *Friendship* (Maitri)—excess of attachment. *Love* (Kâmaḥ)—desire for an intercourse[3] with a woman. *Wrath* (Krodhaḥ)—intolearation. *Ignorance* (Ajñanaṃ)—indistinct knowledge. *Childishness* (Bâliśyaṃ) *i. e.* non-commencement of knowledge. By thousand &c. are intended (to be indicated) the copper *paṇas*.

Similarly[4]: " A just king should, however, fine and banish (men of) the three (lower) orders[5] who give false evidence; a Brâhmaṇa he should (only) banish ". This, moreover, is applicable to (a case of) a habitual (offence), as the present tense has been used in the term " Kurvâṇân (कुर्वाणान्), *Three orders* (trîn varṇân) *i. e.* those commencing with the Kshatrîya order, should be fined as before and *banished* (pravâsayet) *i. e.* should be killed; as the word *prawâsa* is used in the sene ' to kill ' in the *Artha-śâstra*, and as this text is in the nature of an *Artha-śâstra* text. There also the (particular kind of) *pravâsana viz.*, cutting off of the lip or the tongue, or depriving of the life should be observed by regard to the subject-matter of the (particular) perjury (in question). A Brâhmaṇa, however, should be fined and *banished* *i. e.* expelled from the kingdom. One from whom clothes have gone is a *vivâsâḥ*. Having prepared the *causal* form indicative of one who causes (a man) to be without clothes ', the present form is obtained

* PAGE 51.

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1. Ch. VIII. 120-121.
2. मोह.
3. स्त्रीव्यक्तिकराभिलाष, is a better reading.
4. Manu Ch. VIII. 123.
5. Varṇân वर्णान्.

by dropping[1] the *ti*—by analogy to the rule (in the Vârtika): " When there is a suffix at the end of words ending in इ the change that takes place is the same as that which takes place when the suffix इष्ठ is at the end " ' Should make naked ' is the meaning. Or, that in which one lives is a *vâsa* (वास:) *i. e.* a house. *Vivâsayet* therefore would mean-should demolish his house.

Even in the case of a Brâhmaṇa, when no special motive such as covetousness &c is known, nor a habit, only the fine specified in each place respectively (is to be imposed). In the case of a habit, however, there is a pecuniary punishment, as well as banishment. There, also, the rule as regards the several punishments of *vivâsana*, stripping off of all raiments, demolishing the house and banishment from the kingdom, should be observed having regard to the surrounding circumstances such as the caste (of the party) the amount &c.. If when no special motive such as covetousness &c. is known, as also when no habit is formed, in the case of perjury regarding a small claim, even for a Brâhmaṇa there will be a pecuniary punishment as is the case with a Kshatriya. When, however, the claim is a large one, banishment from the kingdom is (the punishment). Here in the case of a habit, the rule of **Manu** should be observed even in the case of all.

It should not, moreover, be supposed that there is no pecuniary punishment for a Brâhmaṇa. For if there were no pecuniary punishment, coropreal punishment being prohibited, it would happen that even in petty offences either the punishment of stripping off of clothes, demolishing the house, branding or banishment would follow or that there would be no punishment at all. And this would be opposed to the text, " In the case even of persons belonging to all the four orders, for those who do not perform an expiation, legal punishment either corporeal or affecting property should be ordered" Also *vide* the text[2]: "A Bráhmaṇa who carnally knows a guarded Bráhmaṇĭ against her will should be fined a thousand (paṇâs)".

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[1] *i. e.* अस् in विवासस्. टि–"अचोऽन्त्यादि टि" (व्या० सू० १।१।६४). "The final portion of a word, beginning with the last among the vowels in the word, is called टि". It is that portion of a word which is included between the last letter and the nearest vowel. *e. g.* in अग्निचित् the portion इत् is टि; as also here in विवासस्, the portion अस् is टि.

इष्ठ or इष्ठन्—" आतिशायने तामिबिष्ठनो " (व्या. सू. ५।३।५५)— " When the sense is that of surpassing, the suffixes तमप् and इष्ठन् are used. णिच्–the Causal.

Here the formation of the word विवासयेत् is explained as follows: विवासयेत् *i. e.* should deprive him of his clothes' विवाससं करोतीति would be विवाससयति; but the अस् in विवासस् is dropped by analogy to the rule in the case of the तद्धिता इष्ठ. contained in the वार्तिक "प्रातिपदिकाद्धात्वर्थे बहुलमिष्ठवच्च." *e. g.* in the case of लघु we get लाघिष्ठं by dropping the टि. so here also by dropping the टि *i. e.* अस् in विवाससयति we get विवासयति.

[2] Of Manu Ch. VIII. 378.

As to the text of **S'ankha**: "**Of** the three (higher) orders, (**the** punishments of) deprivation of property, corporeal chastisement, imprisonment, ordeal, banishment and branding, are ordained for a Bráhmaṇa". Here on account of the contiguity of corporeal chastisement the (punishments of the) deprivation of wealth or of the entire property are intended. For, the (punishments of) corporeal punishment and deprivation of entire property have been mentioned together in the text: "As for the Corporeal punishment, it begins with (simple) obstruction and extends to deprivation of life; while the pecuniary punishment begins with a *Kâkini*[1] and extends similarly to the loss of the entire estate."[2] As to what has been said[3] "He should be expelled out of the kingdom leaving all his property (to him) and himself untouched", it has a reference to the first act of Sáhasa, and not to all (kinds of) offences.

A corporeal punishment, however, does not ever occur for a Brâhmaṇa, as **Manu**[4] has stated generally that "Let him (*i. e.* the king) never slay a Brâhmaṇa, though he is immersed himself in all (kinds of) sins". Moreover **Manu**[5] says: "No greater crime is possible on earth than slaying a Brâhmaṇa; a king therefore must not even conceive in his mind the idea of killing him (a Brâhmaṇa)".

Yâjñavalkya Verse 82.

He who having been called upon and sworn to give evidence conceals it from others under the influence of passion, should be made to pay an eight-fold fine; a Brâhmaṇa, however, should be banished.

Mitâksharâ:—moreover, he whoever, who having accepted the task of a witness, and having been *sworn to give evidence* (**sakshyaṃ s'râvitaḥ**) along with other witnesses, at the time of his deposition, being *under the influence of passion* (**tamovṛito**) *i. e.* with his mind seized with the feeling of anger &c., *conceals* (**ninhnute**) his *evidence* (**sâkshyaṃ**) from *others* (**annyebhyaḥ**) *i. e.* witnesses with the words: "I shall not be a witness here &c." that man *should be made to pay* (**dâpyaḥ**) a fine *eight-fold* (**ashtaguṇaṃ**) of the amount of the fine (payable) in case of a defeat in the suit. A Brâhmaṇa, however, who is unable to pay an eight-fold fine should be banished. The penalty of banishment, however, should be observed to be either the stripping off of clothes, the demolition of the house, or

Penalty for not giving evidence when cognisant (of the facts).

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[1] The smallest coin *e. g.* a Cowrie, It is also described as a money measure 20 cowries or ¼ of a Paṇa as also that of a Mâsha.

[2] Nârada Appendix 54.

[3] By Manu Ch. VIII. 380.

[4] Ch. VIII. 380.

[5] Ch. VIII. 381.

the expulsion from the kingdom according to the subject-matter of the suits. In the case of others, however, in the absence of an eight-fold fine the penalties of doing such labour as is appropriate to the caste, fettering in chains, or incarceration in jail or such other should be observed. And this, again, should be followed (to be the rule) even in the last verse.

When all withhold evidence, then the liablity of all is equal. When, however, having given evidence they speak falsely then they should be punished regard being had to the exigencies (of each case). As says **Kâtyâyana**: "Having once given evidence, those who depose to the contrary are liable to be punished, (as) they are guilty of prevarication ".

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Nor, moreover, ought the witnesses cited by one be approached in secret by another. As says **Nârada**[1]: " One should not approach in secret a witness cited by the other (side), nor should he (try to) win him over through other (means). A party resorting to such practices is (liable) to lose."

Not giving evidence as also giving false evidecce has been generally prohibited of the witnesses. The Author mentions cases by way of exception to it.

Yâjñavalkya Verse 83 (1.)

Where men of the four orders are (likely) to suffer capital punishment, there a witness may speak the untruth.

The Author indicates a case where untrue testimony is permissible.

Mitâksharâ:—Where, if a fact is deposed to there is the likelihood of a capital punishment (being given) to *men of the four orders* (**varṇinâṃ**) *i. e.* of the *Sûdra*, *Vaisya*, *Kshariya* and *Vipra* classes, a *witness may speak the untruth* (**sâkshi anṛitaṃ vadet**) *i. e.* should not speak the truth. And by this prohibition against true evidence a permission for refusing to give evidence or for giving false evidence is given for witnesses of whom it has been prohibited before.[2]

Where *e. g.* in the case of a complaint founded on suspicion, by speaking the truth the *varṇi* likely to suffer capital punishment, and by speaking an untruth no one is to suffer capital punishment, there an untrue testimoney is permitted. Where, however, by speaking the truth either the plaintiff or the defendant is likely to suffer capital punishment and also by deposing falsely one of the two is likely to suffer capital punishment, there a refusal to give evidence is allowed, provided the King permits. If, however, the king does not let off in any case unless testimoney is given, then an incapacity for a witness on account of depravity should be incurred. If that too is impossible then truth alone should be spoken. For by giving false evidence the taint of a capital punishment for a *varṇi*, as well as that of giving false evidence is incurred. By speaking the truth, howevcver, there would only be the taint of a capital punishment for a *varṇi*. In such a case moreover, an expiation should be made according to the *Śâstra*.

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[1] Ch. I. 165.

[2] Yâjn I. 82 p. 20. beofre.

(It may be said) then there would be no sin in giving false evidence or in maintaining silence, as the same has been permitted by *Sâstra*, so the **Author says:—**

Yâjñavalkya Verse 83. (2)

For purification from that (sin), the special oblation of rice known as the Sâraswata should be presented by the twiceborn.

Mitâksharâ:—*For purification from that* (*sin*) (**Tatpâvanâya**) *i. e.* for the atonement of the sin on account of the false evidence or a refusal to give evidence. *The* **Sâraswata charu** (*rice oblation*) should be *presented* (**nirvâpyaḥ**) by the *dwijâs* separately. A sacrifice wherein the presiding deity is the goddess **Saraswati** is (called) a *Sâraswata*: The word *charu* is wellknown as indicative of boiled rice which is hot and from which water has not been allowed to flow out (while it was boiling).

Here this is the meaning. False evidence or a refusal to give evidence which has been prohibited for witnesses before has here been sanctioned. This expiation is in reference to the transgression of the rules generally prohibiting the giving of false evidence or not giving any, and as is to be found in the texts: " One should not tell an untruth "; " a man incurs a sin by not giving evidence as also by giving a distorted one[5] ".

It may be objected that this text which is in the nature of a sanction is meaningless inasmuch as even with this text allowing witnesses to tell an untruth or not to speak at all the text propouding the sin incurred by reason of the infringement of the general rule prohibiting witnessess from either speaking an untruth or not speaking at all, remains where it was. But it is not so. For the sin accruing from the infringement of the rule prohibiting witnesses from telling an untruth or not speaking at all is great, while that due to the infringement of the general rule is small and thus the text in the nature of a permission has a meaning.

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[5] Manu Ch. VIII. 13.

Although in other cases the removal of (the taint of) a greater sin would also secure the removal of the smaller sin which is (only) a part (of the greater one), still here by reason of the (special) sanctioning text as also by reason of the rule as to expiation, it appears that by the removal of the greater (sin) the smaller one is not removed although it is a part of it.

This text should also be understood as a permission for speaking an untruth or not speaking at all in the cases such as those of travellers and others where there is the danger of a capital punishment being passed upon a *warṇi*. And as there is no other (special) prohibition, there would be no (necessity for an) expiation. In case the real facts are disclosed in course of time by other causes the absence of a punishment for witnesses and others also is inferrable from this very text.

Here ends the Chapter on Witnesses.

Chapter VI.

Of Documents.

✽ PAGE 53.

Possession and witnesses have been explained. Now begins the consideration of documents.

Here, a writing is of two sorts, a *S'asana* (royal grant) and a *Jânapada* (executed between citizens). *S'asana* has been explained[1]. (Now) Jânapada is being explained. That moreover is twofold—one in his own handwriting and the other in another's hand. Of these, that in one's own handwriting may be without any attestation, while that in another's hand should bear attestation by witnesses. These two are accepted as proofs having regard to the usage of the country as says **Nârada**[2]: "A Document has been said to be of two kinds (1) in the handwriting of the party himself and (2) in that of another person, and respectively having or not having attesting witnesses thereon. The validity of the two (kinds of documents) depends upon local usage."

Of these the Author mentions documents in the handwriting of another person.

Yâjñavalkya Verse 84.

In every transaction where an amount has been agreed to by a contract entered into by mutual consent, there should be made a writing about it with (the attestation of) witnesses (thereon), and with the name of the creditor.

Mitâksharâ:—Between the creditor and the debtor whatever *amount* (**arthaḥ**) *e. g.* gold &c, *by mutual consent* (**parasparaṃ swaruchchyâ**) *e. g.* "so much should be paid after such and such an interval; so much should be the monthly rate of interest &c." *has been agreed to by a contract* (**nishṇâtaḥ**) *i. e.* settled; in reference to such an amount, if in course of time a dispute arose, for the determination of real facts, *a writing with* (the attestation of) *witnesses* (thereon) (**lekhyaṃ sâkshimat**) *i. e.* with the attestation of witnesses of the qualtities as described above, (commencing) with *the name of the creditor* (**dhanikapûrvakaṃ**)—that wherein the creditor is (mentioned) first is a *dhânikapûrvakaṃ*—that is to say, where the name of the creditor is mentioned firt—*should be made* (**kâryaṃ**) *i. e.* should be executed. Or persons, possessing the qualifications mentioned above should be made witnesses. *Vide* the text: " In disputes regarding whatever act has been done by a party, either witnesses or a document in his own hand is ordained for establishing the transaction."

The Author mentions a special rule regarding documents in the hand of another person.

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[1] See Yâjnavalkya Achârâdhyaya Verse 318 p. 92. ll. 16-17.

[2] Ch. I. 135.

Yâjñavalkya Verse 85.

And containing, among other things, the year, the month, the half of it, the day (of the month), the names, the castes and the names of their own gotra as also the scholastic title and the names of self and father.

Mitâksharâ:—Moreover, the *year* (**samâ**) *i. e.* the cyclial year, *month* (**Mâsaḥ**) *e. g. Chaitra* &c; *the half of it* (**tadardhaṃ**) *i. e.* the fortnight *i. e.* the bright or the dark (half); *the day* (**ahaḥ**) *i. e.* the date such as the *pratipad* &c. *Names* (**nâma**) *i. e.* of the creditor and the debtor. *Caste* (**Jâtiḥ**) *i. e.* Brâhmaṇa &c.; *the names of their own Gotra* (**swagotraṃ**) *e. g.* Vâsishtha &c. Containing these *i. e.* the year &c. Similarly, *the scholastic title* (**sabrahmachârikaṃ**) *e. g.* he is the master[1] of many branches of learning *i. e.* his academical title such as—' Katha the master of many branches'. *The name of self and father* (**âtmîyapitṛiṇâma**) *i. e.* the names of the creditor and of his father. By the (use of) the term **Âdi** (among other things) are included the amount, the caste, the quantity of the amount, the day of the week &c. A writing, containing these[2] should be executed. This is the relation (of this verse) with the last (verse).

Yâjñavalkya Verse 86.

After the contract has been executed completly the debtor should enter his name with his own hand (at the end) with the words: " What is written above has the assent of me the son of such (and such) a one."

Consent of the debtor.

Mitâksharâ:—Moreover, the contract which was agreed to between the creditor and the debtor by mutual consent, after its terms are completely written down, the debtor *i. e.* the person who incurs (the liability of) the loan, should *enter* (**nives'ayet**) *i. e.* write in the document his own name *with his own hand* (**swahastena**) *i. e.* with the words: "Whatever has been written above in this document *has the assent of* (**mataṃ**) *i. e.* is what was intended by me.

Yâjñavalkya Verse 87.

The witnesses also, should, with their fathers' names before theirs, subscribe in their own hand, thus: " Here, so and so, am a witness." These (witnesses) should be equal.

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[1] The original in बहृचः–Doctor of learning.

[2] Referring to this rule in a case of a will mad by Hindu, which was not written by the testator, nor in which was his signature attested, Sir M. Westropp *C.J.* observed.

" We do not think that we are bound to apply this rule strictly, at all events to documents such as wills, which were not recognized by Hindu Law, and were therefore, not within the contemplation of the author." *Radhabai v. Ganesh* I. L. R. 3 Bom. 7/8.

* PAGE 54.

Mitâksharâ:—Similarly, those persons who have been indicated as witnesses in that document, these also should each separately subscribe their names preceded by those of their fathers with the words: "I Devadatta, am a witness to this transaction." These, moreover, should be (so) selected (as to be) equal in number and quality also.

If a debtor or a witness is not literate, then the debtor through another person, and the witness through another witness, should in the presence of all the witnesses, cause the declaration to be written down. As says **Nârada:** "A debtor who is illiterate should cause his declaration to be put in writing in the presence of all the witnesses, so also should a witness (who is illiterate have it written) by another witness".

Yâjñavalkya Verse 88.

Then at the end (of the document) the writer should subscribe thus, "Being desired by both the parties this was written by me so and so, the son of so and so."

Writer's endorsement.

Mitâksharâ:—Moreover, then the *writer* (**lekhako**), being requested both by the creditor and the debtor—"by me such and such Devdadata, the son of Vishnumitra has this document been written" thus he should subscribe at the end.

Yâjñavalkya Verse 89.

A writing which is in one's own hand, although it be without witnesses, is declared to be evidence, except when it is caused by force or fraud.

Now the Author mentions about a document made in one's own hand.

Mitâksharâ:—A *writing* (**lekkhyaṃ**) which has been written by the debtor in his own hand, such a writing *although it be without witnesses* (**tatsâkshibhirvinâpi**), has been laid down by **Manu** and others to be evidence *except when it is caused by force or fraud* (**balopâdhikṛitâdṛite**) *i. e.* with the exception of that which has been caused by *force i. e.* compulsion, or by *fraud i. e.* in the form of (creating) deception, temptation, anger, fear, intoxication &c., **Nârada**[1] also says: "That document has been laid down as invalid[2] which has been executed by a person intoxicated, by one against whom a charge has been pending, by a woman or by a child, and that which had been executed under compulsion, also that which has been caused by fear or fraud".

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[1] Ch. I. 137.

[2] अप्रमाण—unreliable as evidence.

Such a document, moreover, whether it be written in one's own hand or in that of another, whether it be passed in the course of a transaction with or without security should thus far be written conformably to the usage of the country and should be without prejudice to rules of sequence of sense and the order of words and should be without dropping any letter or alphabet. It need not, however, be necessarily (couched) in nice language; it may be written even in the peculiar native language of the country. As says **Nârada**:[1] "That document is said to be valid which is not opposed to the custom of the country, the contents of which answer to the rules regarding pledges, and which is not in disregard of the rules about the sequence of ideas and words." That which explains in detail is a (rule) *vidhiḥ*. The rule (vidhi) regarding a pledge (âdhi) *i. e.* executing a pledge. Its characteristic *i. e.* 'a pledge for custody', a 'usufructuary pledge', a 'pledge with a time limit' &c. That wherein its characteristics are distinct is *vyaktâdhividhilakshaṇaṃ* (one the contents of which answer to the rules regarding pledges &c.) *Aviplutakramâksharaṃ* (which is not in disregard of the rules about the sequence of ideas and words). Sequence *i.e.* of ideas (*krama*). *Krama* and *aksharas* make up the compound word *kramâkshara*. That wherein the sequence of ideas and words has not been disregarded is an *aviplutakramâkshara*. Such a document, of this description, is leagal evidence. There is no rule as regards nicety of language here as in the case of a royal grant. This is the meaning.

While discussing the rules about documents the Author mentions the rule that a debt entered into a document should be paid by three (persons) only.

Yâjñavalkya Verse 90 (1).

A debt evidenced by writing should be paid by (persons in) three (generations) only.

Mitâksharâ:—As a debt evidenced by a witness should be given by three (generations) only, so also it is ordained that a debt evidenced by a document should be paid by the borrower, his son and the sons of that son *i. e.* by three (generations) only and not by the fourth and others.

An objection—Indeed by the text "sons and grandsons should pay a debt" it has already been established as a general rule that a debt should be paid by three only.

The Answer—True. But this text has been mentioned with a view to meet a suggestion which it is likely may be made that a debt entered in a document might be understood as an exception to this general rule on the strength of its having been found in another *Smriti*. For, after mentioning the characteristics of a document it has been said by **Kâtyâyana**: "Thus, an ancestral debt is made payable after the (proper) time has passed". Thus an ancestral debt which is entered into a document is made payable even though the time (for payment) has passed. Here by the use of the plural in *pitrînâm* (of the ancestors), as also from the expression 'time has passed' it is inferrable that the fourth (descendant) and others may be made to pay. Moreover **Hârîta** also has said "To him in whose possession the document purports to be, should be directed payment to be made." Here also by the general rule that 'the debt is his who has the document in his custody', the inference arises that the payment of debts may be made to the fourth (descendant) and other. Therefore it is proper that the present text is for the purpose of removing the doubt. The two texts, moreover, should be applied in pursuance of the text of the *Lord of the Yogis*.[1]

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[1] Ch. I. 136.

* PAGE 55.

The Author mentions an exception to it.

Yâjñavalkya Verse 90. (2)

A pledge, however, is enjoyed as long as it is not paid off.

Mitâksharâ:—The non-liability for paying a debt having become established by the (general) rule in the text: "a debt is payable by three only although it is reduced to writing and is with a security," an incapacity for recovering a debt might also be inferred. With a view to (avoid) this the Author has stated this (text). By saying that 'a pledge may be enjoyed even as long as the debt is not paid off whether by the fourth or the fifth, a capacity has been indicated in favour of even the fourth (person in descent) for redeeming a secured debt.

An objection—But this too has been once stated already in the text: "a usufructuary pledge never lapses".

The Answer—True, still if this text which is in the nature of an exception, were not given, it (*i. e.*) the capacity would be confined to three persons only. Thus everything is without a fault.

Having disposed of a matter which had occasionally arisen, the Author resumes the subject in the context proper:—

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[1] *i. e.* The sage Yâjnavalkya.

Yâjñavalkya Verse 91.

If a document is in another country, is badly written, or is lost, or effaced, as also, if it is stolen; likewise if it is torn, burnt, or cut asunder, another should be allowed (by the king) to be made (in its place).

Ragarding worn out and other documents.

Mitâksharâ:—The rule that is now being laid down is that when a document has become unfit for a suit, another should be made. And unfitness for a suit arises, when the document is *placed in another country* (**desântarasthe**) which is at a long distance when the document *is badly written* (**durlekhye**) that is—wherein the writing *i. e.* the character or words are bad *i.e.* ambiguous or unintelligible is (called) a badly written document; in such a badly written document. *Lost* (**nashte**) *i. e.* in course of time; *Effaced* (**unmṛishte**) *i. e.* where the characters and letters have been rubbed off on account of the weakness of the ink. *Stolen* (**hṛite**) *i. e.* by robbers &c. *Torn* (**bhinne**) *i. e.* tattered. *Burnt* (**dagdhe**) *i. e.* has taken fire. *Cut asunder* (**Chhinne**) *i. e.* when it is cut into two separate pieces. This (rule applies) moreover when there is mutual consent of the plaintiff and the defendant. In the case of a difference, however, and when parties go to law, time should be allowed for producing the document which is in another country having regard to the inaccessibility and badness of roads.

In the case of document which is lying in a place which is inaccessible or which is lost a suit should be decided by means of witnesses only. As says **Nârada**[1]: " When a document has been transferred into another country, or burnt, or badly written, or stolen, a time should be allowed in case it should exist still; if it be not in existence, the evidence of those who have seen it decides the matter ". In the case of a document which exists *i. e.* is still in existence, for producing it from another country *time should be allowed* *i. e.* an interval of time should be granted. In the case, however, of that which does not exist *i. e.* has ceased to be in existence, the suit should be decided by examining those witnesses who have seen it before. When, however, there are no witnesses, then the decision should be made by (a resort to) an ordeal, vide the *text*:[2] " In a suit where a document or witnesses are unavailable, the divine proof should be exhibited ". This refers to a document between (private) citizens.

Similar is (the case with) a Royal grant. This, however, is the difference: "A document is known as a Royal grant which bears on it the King's own handwriting and which is marked with his own signet seals; it is

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[1] Ch. I 142.

[2] Of Kâtyâyana.

(a valid) evidence in all transactions." Similarly another (kind of) royal deed evidencing success has been mentioned by **Vṛiddhavasishṭha**: "That is called a *jayapatraka* (a document evidencing success) in which is indicated the manner how the point at issue was proved, which contains the answer as well as the proof and which has also the decision (recorded) in it. To the litigant who wins and who has established his point the *jayapatraka* should be delivered over impressed with the Royal seal and having the signature thereon of the Chief Judge in his hand." Similarly the assessors also should add in their own handwriting thus. "This is approved by me the son of so and so &c." *vide* the text of **Manu**: "And also the assessors such as are versed in the *Smṛiti* and the *Sâstra*, should add (in) their own hand just as in the (case of) procedure (prescribed) for documents". Moreover, a proceeding is not declared to be free from a dart except with the unanimous consent of the assessors as says **Nârada**:[1] "That (decision of a) dispute is considered to be without a dart where all the members of a judicial assembly declare. 'This is right', otherwise the dart remains in it."

* PAGE 56.

Moreover, this rule applies only in the case of a judicial proceeding which contains (all) the four components, *vide* the text:[2] "That is declared to be a *jayapatraka* which proves the matter in issue, which contains (all) the four components and which also bears on it the Royal seal." Where, however, there is a flaw as in the text.[3]—"One who alters his former statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned—these are the five varieties of a faulty (*Hîna*) litigant."—in such a case no *jayapatraka*[4] is given, but only a *hînapatraka*[4]—a certificate of a defeat. This (last) moreover is given with the object of imposing a penalty in course of time, while a *jayapatraka* is (given) with the object of establishing the plea of *res judicta*. This is the distinction.

The Author mentions the ways of deciding a case when a doubt or dispute about document arises.

Yâjñavalkya Verse 92.

The genuineness of a doubtful and disputed document may be established by (comparison with other) documents and (other writings) of

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[1] Ch. III. 17.

[2] Of Kâtyâyana.

[3] Nârada II. 33.

[4] A *jayapatraka* is a "certificate of success". supplied to the successful litigant as evidence of his success in the particular suit. A *Hînapatra*—" a certificate of defeat" is only evidence that a particular person was defeated in a particular plea or pleas in a certain litigation.

the party (written) in his own hand, and by similar other means; as also by presumption, by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title and by inference.

Mitâksharâ:—Of a *document* (**lekhyasya**) which has been *doubted* (**sandigdhasya**)—as to whether it is genuine or not genuine—the *genuineness* (**S'uddhiḥ**) *becomes established* (**syât**) *by* (*comparison with other*) *documents and similar* (*other writings*) *of the party* (**swahastalikhitâdibhiḥ**) *i. e.* by (establishing) the genuineness by (means of) another document which was written by him in his own hand. The meaning is that the genuineness would be established, if the letters are similar. By (the use of) the expression *such other* (**Âdi**), it is implied that the genuineness is established by (pointing out) a similarity with other writings of the witnesses, or the writer, written in their own hands (with the one in dispute). A conclusion arrived at by regard to probability is a *presumption* (**Yuktyâ prâptiḥ**). *Prâptih*—is the (presumption arising from the) connection with the thing in dispute with the country, period and persons. A *yukti*—is a probative reasoning as *e. g.* in 'It is probable that this (particular) thing may belong to this (particular) individual." *Direct proof* (**Kriyâ**) *i. e.* the adducing of witness evidence on the point. *Marks* (**Chinhaṃ**) *i. e.* distinctive marks such as a *S'ri* (श्री) &c. *Previous connection* (**Sambanhdhaḥ**) *i. e.* the mutual relations of advance and acceptance (of loans), even before between the plaintiff and defendant on account of mutual confidence. *Title* (**Âgamaḥ**) *e. g.*—" he has established a reliable origin of title to the subject-matter in dispute by so much."—These only are the circumstances. By means of these circumstances the genuineness of a disputed writing may be established. This is the context[1].

When, however, a decision cannot be arrived at in the case of a disputed document, then the decision should be made by the help of witnesses, as says **Kâtyâyan**: " When (the genuineness of) a ducument is disputed the plaintiff should cite those (as witnesses) who are mentioned thereon." This text applies to a case where it is possible to have witnesses. In the case, however, where it is not possible to have witnesses the text of **Hârita** applies, *viz.*—"Where a party says—' I did not execute this document, he (*i. e.* the other party) has forged it'—then keeping aside that document, the decision should be made by means of an ordeal."

When, after the document is established as genuine as also the liability to pay the debt (a question might arise as to) what should be done if a party is unable to pay the entire debt? So the author says:—

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[1] **अन्वय—the order or connection of words in a sentence.**

Yâjñavalkya Verse 93.

The debtor should write on the back of the bond each payment made by him after making such payment; or the creditor should endorse the amount received by him marked in his own hand.

Mode of endorsement on the back of a deed.

Mitâksharâ:—When the debtor is unable to pay the entire debt, then he should pay according to his means, and write the same on the back of the bond thus:—"So much was paid by me;"—or the creditor should endorse *i. e.* write on the back of the document itself whatever amount was *received i. e.* got *by him* (**Upagatam**) thus,—"So much was received by me."—How?—*marked in his own hand* (**Swahastaparichinhitam**) *i. e.* marked by the letters written in his own hand. Or, (it may mean this) *viz*: that the creditor should give to the debtor a note of acknowledgement of receipt marked by letters written in his own hand.

It may be asked:—What should be done with the document when the entire debt has been paid off, so the Author says:—

Yâjñavalkya Verse 94 (1).

After paying the debt, the document should be caused to be torn, or another should be caused to be made for (evidencing) the acquittance.

Matâksharâ:—Having *paid* (**datwâ**), either by instalments or at once, a *debt* (**ṛiṇam**) in its entirety the *document* (**lekhyam**) executed before should be caused to be torn. When, however, the document happens to be in an inaccessible place or is torn, then the debtor *should* * *cause* (**Kârayet**) the creditor to pass to him another document *as evidencing the acquittance i. e.* discharcting him from his obligations as a debtor. The meaning is that the Creditor should pass a deed of discharge to the debtor in the order mentioned before.

* PAGE 57.

It may be asked, what should be done when a debt incurred in the presence of witnesses is to be discharged entirely, so the Author says:—

Yâjñavalkya Verse 94 (2).

And a debt which was incurred before witnesses should be paid off in the presence of witnesses.

Mitâksharâ:—That debt, however, which was incurred before witnessess should be paid off only in the presence of those who had previously witnessed it.

Here ends the Chapter on Documents.

Chapter VII.

Of Ordeals.

Human evidence has been said to be threefold *viz.* consisting of documents, witnesses and use and occupation.

It is now the turn of ordeals; and the Author wishing to expound ordeals as a means of evidence lays down the procedure in ordeals by the first five stanzas commencing with "The balance, the fire &c." (Verse 95). There the Author mentions the ordeals :—

Yâjñavalkya Verse 95 (1).

The balance, the fire, the water, the poison and the KOS'A are the ordeals. (prescribed) here for exhoneration (from an accusation).

Mitâksharâ:—The five ordeals *i. e.* those beginning with the balance and ending with the *Kośa* should *here* (**iha**) *i. e.* in the *Dharma-S'âstra*, be offered for *exhoneration* (**vis'uddhaye**) *i. e.* for removing an ambiguity about a doubtful point.

(It may be said that.) Elsewhere have been mentioned other ordeals even such as *the rice* and like others, *vide* the text of **Pitâmaha** *viz:*—" The balance, the fire, as also the water, the poison and similarly the *Kos'a*, likewise the rice; these are the ordeals; and the seventh is the heated *Mâsha*." Why then say these only? so the Author says:—

Yájñavalkya Verse 95 (3rd quarter).

These are (to be resorted to) in trials on serious accusations.

Mitâksharâ:—The restrictive rule which is here laid down means that these are to be resorted to only in cases of serious accusations, and not that these are the only ordeals. The Author will mention further on the test of seriousness.

An Objection—'Indeed the *Kośa* also is prescribed even in ordinary suits'—vide the text[1]—" The (ordeal of) *Kośa* should be caused to be offered even in petty (charges)".

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[1] Of Pitâmaha.

The Answer–True. The mention of (the ordeal of) *Kośa* among (those of) the balance and others is not indicative of its being limited to serious charges only, but it implies its extention even to *Sâvashtambha*[1] complaints, otherwise it would be extended even to complaints on suspicion. For see the texts:[2] "In the case of those against whom a complaint has been made together with a wager, (the ordeals of) balance and others should be ordered while (the ordeals of) the rice and the *Kośa* (should be) in complaints of suspicion :only. There is no doubt about this."

It may thus be thought that this rule may be applied invariably in the case of serious complaints, complaints on suspicion and complaints with a wager, so the Author mentions an exception:—

Yâjñavalkya Verse 95. (last quarter.)

When the plaintiff has (agreed) to abide by the result (of the ordeal.)

Mitâksharâ:—These *i. e.* the (ordeals of) balance and others become applicable to the defendant[3] *when the plaintiff has (agreed) to abide by the result (of the ordeal)* [**Abhiyoktari S'irshakasthe.**]

S'irshaka—is the head *i. e.* the fourth part of a suit indicative of the success or defeat—and by this is indicated the punishment.—He who agrees to abide by it is a *S'irshakasthaḥ*. *i. e.* amenable to the punishment laid down in it (*i. e.* the decision).

By the text "Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute (or alleged) is (proposed) to be established, the rule of evidence for an affirmative allegation only has been laid down. The author says by way of an exception to it:—

Yâjñavalkya Verse 96 (1).

* PAGE 58.

Or, by consent any one may perform (the ordeal), and the other may submit to the judgment.[4]

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[1] A complaint wherein the complainant undertakes to pay a penalty in case of his failure in establishing his allegations is called a *Sâvashtambha* Complaint—an *Avashtambha* is explained as—स्वोपरि दण्डांगीकारोऽवष्टंभः

[2] Of Pitâmaha.

[3] अभियुक्त—Lit: person complained against.

[4] शिरः—Lit. means the head *i. e.* last or fourth part of a trial *i. e.* that part which declares the success or defeat of parties and the punishment consequent upon it.

Mitâksharâ:—*By consent* (**Ruchyâ**) *i. e.* by the mutual consent of the complainant and the defendant. *Any one* (**anyataraḥ**) *i. e.* either the complainant or the defendant, *may perform* (**Kuryât**) the ordeal, *the other* (**itaraḥ**) *i. e.* the defendant or the complainant (as the case may be): *should submit to* (**wartayet**) *i. e.* take upon himself the *judgment* (**s'iraḥ**) *i. e.* to the corporeal or pecuniary punishment (specified therein).

The meaning is this: Ordeal evidence cannot be confined to the affirmative proof alone as is the case with human evidence, but it is established both by affirmative and negative proof. And hence in the plea of denial, or of confession and avoidance, or of *res judicata*, an ordeal is permissible according to the option either of the plaintiff or of the defendant.

It has been said above that the ordeal of *Kos'a* is permissible in petty complaints, in a serious charge as also in a charge founded on suspicion or accompanied by a wager. While a restrictive rule has been laid down that the ordeals beginning with the balance and ending with (that of) the poison shall be (resorted to) only in serious charges and in complaints accompanied by a wager. There, the Author mentions an exception to the expression—" Only in complaints with a wager ".

Yâjñavalkya Verse 96 (2).

In the case, however, of high treason. and of sin (of an aggravated type), a party should (be allowed to) perform an ordeal even though the other party do not submit to the judgment.

Mitâksharâ:—In charges of *high treason* (**Râjadroha**), or of sins (**pâtaka**) such as the *Brahmicide* and like others one *should perform* (**Kûryât**) the ordeal of the balance &c. even if there is none who has offered to submit to the judgment; and also in charges of robbery, as has been said :[1] "An ordeal should be allowed to those, who have fallen under suspicion of kings, as also those who have been pointed[2] out along with robbers, and who are anxious to acquit themselves." The (ordeal of) rice, moreover, should be given in charges of petty thefts only, *vide* the text of **Pitâmaha**: " In the case of theft, however, the (ordeal of) rice should be offered and in none other; this is certain." The (ordeal of) heated coin, moreover, (should be observed) only in a charge of robbery, *vide* the text:[3] " The heated *mâsha* is ordained in a charge of robbery". Other oaths, moreover, refer to petty disputes over small amounts. *Vide* the text of Nârada:[1] "(Let him be sworn by) the[2] truth, vehicle and by his weapons, as also by his cows, grain, and gold; by venerable deities or revered ancestors, by their pious gifts or meritorious deeds. He should (be made to) touch the head of his sons or wives or even of his relatives. Or in all charges the drinking of the *Koṣa* water also—These are the (kinds of) oaths prescribed by **Manu** in petty cases."

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[1] By Nârada and Pitâmaha.

[2] निर्दिष्टानां च दस्युभिः—This is a very ambiguous expression. It may be interpreted in many ways. One way of interpreting it as translated above—"pointed out along with or marked as robbers"—दस्युत्वेन निर्दिष्टानामित्यर्थः Other ways are—enumerated or cited or referred to along with or by robbers. The one selected in the text would appear to be preferable.

[3] Of Pitâmaha.

Although oaths also are regarded as an ordeal by reason of the fact that an ordeal is generally understood by the people to be that which decides a point which cannot be determined upon by (means of) human evidence, still a distinction is indicated between these and the ordeals of the balance and others in that, (while) the one is resorted to by reason of the fact that while in the case of one[3] a final decision is obtainable immediately without any interval of time, in case of the other a decision is obtained only after an interval of time, on the analogy of the rule in the '*Brâhmaṇa* and *Parivrâjaka*' maxim.[4] The enumeration, however, of (the ordeal of) *Kos'a* along with (those of) the balance and the rest is due to its applicability to serious charges and to complaints accompanied by a wager, and not to (any) similarity with the ordeals of the balance and the rest, nor to its being helpful in enabling an immediate decision without any interval of time. As for the (ordeals of) rice and the heated *mâsha*, although they are helpful in securing an immediate decision without any interval of time, still as they are prescribed in petty complaints and in complaints on suspicion they are distinguished from the (ordeals of) balance and the like and hence their non-enumeration along with those; and this is a satisfactory explanation. These ordeals and the oaths also may be resorted to in disputes regarding debts and the like, having regard to exigencies.

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[1] Ch. I. 248-250.

[2] See the ways of swearing several orders. Supra. p. 109 ll: 9-20.

[3] This passage requires an explanation. Ordeals are of two hinds. (1) One in which the truth or falsehood of a claim is determined immediately on the spot without any interval of time, and (2) the other which requires some interval of time for a like determination The ordeals of the *balance*, *fire* &c. are instances of the first, because if the man suffers injury in the performance of the ordeal, his defeat is determined then and there. The ordeal of an oath is an instance of the second in asmuch as under the rules of this ordeal if any calamity befalls a party within a certain period after he takes an oath he is persumed to have taken a false oath. This necessarily requires an interval of time to elapse. Thus the two types are distinguishable on the ground of their capacity to induce a *prompt* or a *deferred* decision (समनन्तरनिर्णयनिमित्तत्वेन & कालांतरनिर्णयनिमित्तत्वेन).

12. This is called the ब्राह्मणपरिव्राजकन्याय. In such a sentence as ब्राम्हणानामन्त्रयस्व परिव्राजकांश्च the separate and additional mention of परिव्राजकs, who generally are included in the former term, merely emphasises their position as a special part of the general body. So here also, although the balance and oaths are equally ordeals, the latter have been specifically mentioned in order to bring out their capacity to induce a decision after an interval of time.

As for the text of **Pitâmaha** *viz.* " In disputes regarding immovables ordeals should, by all means, be avoided," that is to be understood as meaning that when evidence in the form of documents or (the testimony) of neighbours and the like is available ordeals should by all means be avoided.

An objection.—Indeed there is scope for the ordeals even in other suits even when other (kind of) evidence is available.

Answer.—True. In suits for the recovery of debts and the like, even after the plaintiff has exhibited his witnesses (duly) quafilied as mentioned before,[1] if the defendant resorts to an ordeal after giving an undertaking to suffer punishment (in case of failure) then an ordeal is also permissible. For it is likely that the witnesses may have corrupt motives, while an ordeal is free from all faults, and the object of a law-suit is to find out the truth about the point in dispute, as indicated in its definition. As says **Narada**: " A decision based on an ordeal which is truth itself is a real decision according to *Dharma*, while a decision based on witness evidence is a merely legal decision. When a point can be established by divine evidence, human or documentary evidence should not be used." The rule *viz.* " in disputes regarding immovables, when direct evidence such as the evidence of neighbours or the like is available an ordeal should not be allowed even if the defendant resorts to it after giving an undertaking to suffer punishment (in case of failure)"—has been stated to remove the idea of an alternative[2] course. The text of **Pitâmaha** *viz:* " in disputes about immovables &c." is not intended to exclude ordeals absolutely, as otherwise there would be the possibility of a non-decision when documentary evidence, testimony of neighbours or similar evidence is not available.

General Rules of procedure in Ordeals.

Yâjnavalkya Verse 97.

Having summoned one who has bathed with clothes on, and has observed a fast, the Chief Judge should at sunrise cause him to undergo (any of) all the ordeals in the presence of the King and the Brâhmaṇas.

Mitâksharâ:—Moreover the *Chief Judge* (**Prâdviâkaḥ**) *having summoned* (**âhûya**) at sunrise one who *has observed a fast* (**uposhitam**)

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[1] Verse 68, 69, p. 103. ll. 20-26.

[2] The meaning is that the alternative of an ordeal as an optional course is not allowed in disputes regarding immovables. The optional application has been restricted to specific cases. For विकल्पकव्यवस्थिति: See note 2 p. 34 above.

(*i. e.*) on the previous day, and who *has bathed with clothes on* (**sachailam snâtam**), in the presence of the king as also of the Brâhmaṇa councillors, *should cause him to undergo* (**Kârayet**) (any of) *all the ordeals* (**Sarvâṇi divyâni**).

The optional rule as to fasting as laid down by **Pitâmaha** *viz.* "To one who has fasted for three nights, or to one who has fasted for one might only, and who has purified himself and has wet clothes on, ordeals should always he administered"—is to be actually interpreted by regard to the strength or weakness of the party as also to the importance or triviality of the charges under consideration. The rule as to fasting, moreover, is applicable also to the Chief Judge who causes the ordeal to be undergone. *Vide* the text of **Pitâmaha**; "In the case of ordeals, (also) the Chief Judge who has fasted should by the King's permission himself observe all the necessary forms." Here also although the expression used is "at sunrise" generally, still having regard to the practice among the wise and the respectable, the ordeals should be administered on a Sunday. And even there the special rule laid down by **Pitâmaha** should be observed *viz.* "The test by fire should be in the first part of the day, the balance also shall be during the first part; in the midday, however, the (ordeal of) water should be administered by one who desires to follow the principles of *Dharma*. The proof by (the ordeal of) *Kosha* is laid down to be in the first part of the day, while in the latter part of the night which is quite cool, (the ordeal of) poison may be offered." As for the ordeals of the rice, the heated *mâsha* and the like, for which no special portion of the day has been prescribed, the administration should be also in the first half (of the day), *vide* the text of **Nârada** which is quite general *viz*:—"For it is ordained that all ordeals should be administered in the forenoon." Dividing a day in three parts, the first part is called the *Purvânha*,[1] the middle the *Madhyânha* and the last the *Aparânha*. Moreover another rule as regards the particular time has been indicatded by texts which are in the nature of affirmative and negative and injunctions. Of these, those indicated by offirmative injunctions are as follows:—"For (for the ordeal by) fire the cold seasons[2] of *Śiśira* and *Hemant*, also the autum season of *Warshâ* have been prescribed; the (ordeal by) water is (administered) in the *S'arat* and *Grishma* seasons, and the (ordeal of) poison in the seasons of *Hemanta* and *Siśira*. The month of *Chaitra*, and of *Mârgaśiraḥ*, as also of *Vaiśakha* are months common to all the ordeals as they are not unfavourable to these. The (ordeal of) *Kośa*, however may be administered, balance and the at any time." The mention of *Kośa* is indicative by implication of all the oaths. Moreover the (ordeal of) rice may be administered at all times, since no Special rule is mentioned (for it). That indicated by negative injunctions is as follows—"There cannot be a purification by (the ordeal of) *water* in the cold season, nor can there be a purification by *fire* in the hot season. The (ordeal of) *poison* should not be administered in the rainy season, nor also the (ordeal of) *balance* in the midst of a heavy gale; nor in the afternoon, nor in the twilight time nor ever at mid-day." By the use of the word *cold* (*śita*) in the text—"there connot be a purification by water in the cold season" the seasons of *Hemanta*, *S'iśira* and *Warshâ* are also included by implication. And in the text "nor can there be a purification by fire in the hot season" the repetition of the prohibition in the case of the *Grìshma* and the *S'arada* seasons which was already established by the affirmative injunction, is indicative of a *special* injunction (आदरार्थम्).[1] The circumstances justifying (an ordeal) however will be mentioned further on.

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[1] Translated either as First part or "forenoon."

[2] ऋतु:—A season, or period of the year commonly reckoned to be six. "शिशिरश्च वसंतश्च ग्रीष्मो वर्षाः शरद्धिमः" *viz.* S'isira, Vasanta, Grishma, Varshâ, S'arat, and Hemanta,

The author mentions special rules in case of (several) persons liable (to an ordeal).

Yâjñavalkya Verse 98.

The (ordeal by) balance is (prescribed) for a woman, a child, an old man, a blind man, a cripple, a Brâhmaṇa and one diseased; (an ordeal by) fire or water (is for Kshatriyas or Vais'yas respectively); for a S'ûdra (the ordeal by) poison weighing seven barley corns only.

Mitâksharâ:—*Women* (**Stri**) *i. e.* all women without regard to any particular caste, age, or circumstances. *A child* (**Bâla**) until he attains the sixteenth year, without regard to the particular caste. An *old man* (**vriddhaḥ**) *i. e.* one who is above eighty. *A blind man* (**andhaḥ**) deprived of the eyesight. *A cripple* (**Panguḥ**) *i. e.* deprived of the use of the feet. *A Brahmana* (**Brâhmaṇa**) *i. e.* the whole caste (Brâhmana). *Diseased* (**Rogî**) *i. e.* one affected by a disease. The rule laid down is that for the purification of these, the (ordeal of) balance alone is allowed. *The (ordeal by) fire* (**agniḥ**), as olso (that of) the plough (*Phâla*) and the heated **Mâsha**[2] is for a Kshatriya, and water alone is for a Vaisya. The word *wâ* (or) has a restrictive sense. *The barley-corns of poison* (**vishasya yawâḥ**) of the stated quantity, *i. e. seven only* (**saptaiva**) are (ordained) for the purification of a S'udra (**Sudrasya**). By ordaining the (ordeal of) *balance* for a Brâhmana, and the (ordeal of) poison weighing seven barley corns only for a Śûdra, the (ordeals of) fire or water come to be ordained for the Kshatriya and the Vaiśya. This very thing has been made clear by **Pitâmaha**: "The (ordeal of) balance should be offered for a *Brâhmaṇa* the (ordeal by) fire for a Kshatriya; The water (ordeal) has been ordained for a Vaiśya, and (the ordeal of) poison should be administered to a Śudra."

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[1] See Note 4 on p. 2 English Mitâksharaâ.

[2] माष;—is a particular weight-measure of gold; it is either the $\frac{1}{20}$th part of a *Paṇa.* "माषेा विशंतिमो भागो पणस्य परिकीर्तितः"—or is the eightfold of a *Gunja* गंजाभिरष्टभिर्माषः—known in the Indian gold market as a mâsâ (मासा).

As to what has been said[1] that there should be no ordeal in the case of women &c. *viz.* "An ordeal should never be administered to persons engaged in performing a vow, to those afflicted with a heavy calamity, to the diseased, to ascetics, or to women, if the rules of *Dharma* are to be attended to"—that is for removing the rule of option laid down in the text[2]—"or, with consent, the other may perform the orderal" The purport is this. In complaints regarding obstruction, when women are the complainants, the ordeal is allowed only for the persons complained against; and even when these[3] are the defendants, the ordeal shall be for the complainants only. In cross-complaints however an option only is allowed; and by this text even there a restrictive rule has been imposed as to the balance only. Moreover, in complaints on suspicion about heinous sins, the (ordeal of) balance alone is prescribed for the women and others.

Thus this text has a purpose in that it lays down a restrictive rule as to ordeals in the case of women and others when all ordeals are possible in the months of *Margaśirah*, *Chaitra* and *Vaiśâkha* which are common to all ordeals. Nor, moreover, should it be supposed, that (the ordeal of) the balance alone is prescribed for women at all times, since a rule has been laid down for their purification by the (ordeals of) balance, *kōśa* and fire omitting (those of) the poison and water in the text: "And the (ordeal by) poison has not been ordained for women, nor has the (ordeal of) water been laid down; the real truth at the bottom should be sought for from them by means of the (ordeals of) balance and *Kośa*" similarly the rule should be applied in the case of a child and others,

Similarly, even in the case of the Brahmans and others, the rule as to the (ordeal of) balance &c. does not always apply, *vide* the text of **Pitâmaha** *viz* "Purification by (the ordeal of) K*ośa* is ordained for all (members of) castes; all these ordeals hold in the case of all with the exception of (the ordeal of) poison in the case of a Brâhmaṇa". Therefore

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1. By Naârda I. 256.
2. Of Yâjnavalkya II. 96 see above p. 134 l. 30.
3. *i. e.* the women etc.

when at common periods the ordeals are equally possible this text is intended to restrict it to that of the balance only. During other periods, however, the ordeals prescribed at the respective times are (allowable) for all. Thus : "In the rainy season fire alone is (prescribed) for all. In the seasons of *Hemanta* and *Siśira* there is an option in the case of the three castes, *viz*: of Kshatriya and others for (the ordeals of) fire and poison. For a Brâhmaṇa, however, the (ordeal of) fire alone and never (that of) poison is allowed, *vide* the prohibition (contained) in the text " with the exception of (the ordeal of) poison in the case of Brâhmaṇa." During the seasons of *Grishma* and *S'arad* (the ordeal of) water alone (is allowed.) Of those, however, for whom (the ordeals of) fire &c. are prohibited having regard to the special maladies from which they might be suffering e. g. in the text.—"The (ordeal of) fire should be avoided in the case of the lepers, and (that of) the water in the case of persons suffering from cough and heavy breathing; and the (ordeal of) poison should always be avoided in the case of persons suffering from billious or phlegmative complaints "—in the case of such persons, even in the periods (specially) mentioned for (the ordeals of) fire &c. the common ordeals of the balance &c. alone are allowed. Similarly, having regard to the text—"(The ordeals of) water, fire and also (of) poison should be administered to strong men"—even in the case of weak men, having regard to the prohibitive rule in general, such ordeals should be administered as are conformable to the (special) caste, age and surrounding circumstances and as do not offend against the rules as to seasons and time.

It has been said (above) that "these ordeals are ordained in the case of serious complaints." The Author now mentions that which makes for the seriousness in a complaint.

Yâjñavalkya Verse 99 (1).

Never until (the subject matter of the dispute is below) a thousand should (the ordeal of) the plough, nor the (ordeal of) poison, nor also of the balance (be allowed.)

Mitâksharâ—While the subject-matter of the suit is less than a thousand *Paṇas*, the ordeals of the plough, the poison, or of the balance should not be caused to be made ; and even the ordeal of water also which is common as has been said :[1] " The ordeals beginning with the balance and ending with that of the poison should be administered in heavy cases." Here the non-mention of the (ordeal of) *Kośa* is accountable by its mention even in connection with petty complaints, in the text. "the

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[1] By Pitâmaha.

(ordeal of) *Kośa* may be offered even in a petty case." The meaning is that these four ordeals are allowed only in cases for the amount of a thousand *Paṇas* or above and not below.

An objection:—Indeed the ordeals of fire &c. have been specified by **Pitâmaha** even for (suits for) less: "In the case of a thousand, the (ordeal of) balance should be offered, so the iron[1] (ordeal) should be given for the half of a thousand; for the half of a half, however the (ordeal of) water, and for the half of that, the (ordeal of) poison has been prescribed."

The Answer. True. In such a case (however) the rule is to be thus interpreted and applied: The text of **Pitâmaha** is (to be accepted as) applicable to such properties in the deprivation of which there occurs a degradation, while the text of the **Lord of the Yogis**[2] is to be taken as referring to other (kinds of) property. And, moreover, both these texts apply to cases of thefts and violent crimes. In the case of concealment, however a special rule has been pointed out by **Kâtyâyana:** thus:—"In cases where there is a "denial of payment, in such a case the quantity or amount (of the pro-"perty) should be determined. In cases of theft and assault an ordeal "should be administered even if the subject-matter be a trifle. Having "ascertained the quantity of the property of whichsoever kind it may be "its equivelant in gold should be determined, and when a gold measure is "ascertained, then the ordeal should be administered. Having (thus) "ascertained the amount (equivalent) in gold coins, for the loss of hun-"dred, (the ordeal of) poison has been ordained; for the loss of eighty, "however, (the ordeal of) fire alone should be offered. In the case of a "loss of sixty, the (ordeal of) water should be given; while for forty the "(ordeal of) balance. For a loss of twenty or ten however, (the ordeal of) "drinking the *Kōśa* is ordained. The (ordeal of) rice are ordained for a loss "of five and more or of a half or its half. For its half or the half of this half "however the heads of sons and others should be touched. For the loss of a "half of this or of its half again, however, the means proof resorted to in "this world have been ordained. A king thus discriminating does not fail "in his *religious* or *secular* duties (*Dharma and Artha*)."

*PAGE 61.

In the text "Having ascertained the amount in gold coins." the term *gold* (coins) is indicative of the measure already mentioned above *viz*. "Sixteen Mâshas make a gold coin". Moreover the word "loss" here is indicative of a "concealment." In the text[1] "Never until the subject-matter is below a thousand should the plough be allowed &c., the thousand of a copper paṇa should be understood.

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[1] *i. e.* the fire..

[2] *i. e.* Yâjnavalkya.

It may be said—Indeed these ordeals have been mentioned in cases of sedition, and other crimes, then what of the text "never untill the subject-matter is below a thousand should the plough be allowed"?

Anticipating this—the Author says :—

Yâjñavalkya Verse 99 (2).

But in the cases of offences affecting the king and in serious charges, the parties should always undergo an ordeal after having purified themselves.

Mitâksharâ : In cases of sedition as also in accusations of heinous crimes, always, without regard to the quantity or amount (the parties) should perform ordeals after having purified themseves by fasting &c. Similarly a special (rule as to) the place has also been mentioned by *Nârada*[2]: "Before the gates of the Court or of the Royal palace, or in sight of a temple, or in a cross-road, must be placed, firmly into the earth, after having been covered with perfumes, garlands and unguents." 'must be placed' *i. e.* the balance. The details have been mentioned by **Kâtyâyana** : "The trial of men "accused of heinous crimes should be caused (by an ordeal) before the seat of "the God Indra. Of those who are accused of having attempted sedition "the trial should be ordered to be held before the gate of the royal palace. "For those born of a connection between a woman of a higher and a man of "a lower caste, the ordeal should be administered at a place where the "roads cross. In the case of others, than these, the ordeal should be offered "in the court-house. This is what the wise think. Of the untouchables, "of persons belonging to the basest class, of the slaves, of the *mlechhhas*, of "persons guilty of heinous crimes, and of persons born of a *Pratiloma*[3] "connection the trial shall never be before the king. In cases of doubts ? "the ordeals known as ordained in each case should respectively be administered."

Here end the rules of procedure about the ordeals.

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[1] Of Yâjnavalkya 99 (1).

[2] Ch. I. 265, 266.

[3] A *pratiloma* connection is a union between a man of a lower, with a woman, of a higher class, its converse is called the Anuloma. see Yâjn. Achara IV 90-96.

After having thus stated the rules of procedure applicable to all kinds of ordeals, the Author now mentions the procedure for administering of the ordeals of the balance and others :—

Yâjñavalkya Verse 100, 101, 102.

When men, versed in holding a balance have seated a party therein, weighed him against an equal weight, marked a line, and caused him to descend, (100) he should invoke the balance thus [102 (4)]: " O balance thou art the abode of truth and wert created by the gods in the olden times, therefore, O auspicious one, speak the truth; free me from suspicion. (101.)

O mother, if it be that I am the sinner then carry me down. If I am pure, carry me upwards [102. (1-3)]

The administration of the balance and other ordeals.

Mitâksharâ: Those who know the *holding* (*dhâraṇam*) *i. e.* the weighing of a balance *i. e.* the goldsmiths and others, by these by means of another measure *e. g.* clay &c. having been *weighed against an equal weight i. e.* having been made equal (in weight), and having been seated in the balance *i. e.* seated into it, the party, *i. e.* either the plaintiff or the defendant, having drawn the line determining the ordeal, *i.e.* having, by means of a white chalk, drawn a mark round that side of the balance wherein he was seated in the position of an equilibrium, and having been made to descend, he should *invoke the balance i. e.* offer a prayer to the balance by the following *mantra*, *viz.*—" O balance, thou art the seat of truth, (and) in olden times (**Purâ**)thou wert, by *gods* (**Devaiḥ**), *i. e.* by the *Hiraṇyagarbha* and others, *created* (**vinirmitaḥ**) *i. e.* manufactured. *Therefore* (**Tat**) *i. e.* for that reason, *speak* (**wada**) *i. e.* point out, *the truth* (**satyam**) *i. e.* the real nature of the matter in dispute. *Oh auspicious* (**Kalyâṇi**) *i. e.* good one, *free me from* this *suspicion. Oh mother if it be that I am the sinner i. e.* am telling an untruth, *then* you should *carry me down.* If, however, *I am pure i. e.* am telling the truth *then carry me upwards.*

The form of prayer for the Chief Judge for addressing the balance has been laid down in other *Smritis*. The present *mantra*, however, is for him who performs the ordeal. The test of a success or a defeat is, moreover obtainable as being indicated by the *mantra* itself and so has not been mentioned separately.

The construction of the balance, however, having for its object the seating of the party (with it), has been lucidly described by **Pitâmaha, Nârada** and others thus :—

" The wise should construct a balance after saluting the guardian "deities of the quarters, and after cutting down with the incantation of the "hymns a sacred tree from which a sacrificial post is obtained. The

“hymn should verily be repeated softly at the time of cutting the tree.
“A qudrangular balance should be made which should also be strong and
“straight. Rings should be fastened at three places and with a purpose.
“The balance should be four *Hastas* in length and the two posts also should
“be of equal measure. The space intervening between the
* PAGE 62. “two, however, should be two *Hastas* or half a *hasta* more;
“and the two (remaining) *Hastas* of both the posts should
“be dug into the earth. Moveover, two arches should be created in the rear
“of both the posts, and (these) should always be higher by ten *Angulas* than
“the balance. Then, two suspenders of clay, should be prepared, hanging
“downwards from the arches suspended by ropes and touching the head of
“the balance. A firm balance facing towards the east should be erected on
“a holy spot, two scales should be fastened to the sides of both (the posts),
“and the (blades of the) *darbha* grass should be placed in both the seats
“with their ends turned towards the East. In the scale towards the west
“should be weighed the parties (performing the ordeal), and in the
“other pure clay. There (*i. e.* on this side) he should place a basket and fill
“it with bricks, stones and sand.”

Here, there is an option as to the selection of clay, bricks, stones or sand.

“Persons should be appointed as judges who are well-versed in the
“weighing of balances viz: the grocers, the goldsmiths as also the
“bronze-smiths. The Judges should always make the balance even and in
“a line with the suspender and the wise should place water over the
“balance, and that balance should be considered as even wherein the water
“does not move.

“Having first weighed the man and after having got him down, the
“balance should always be kept adorned with buntings and flags and then
“one knowing the *mantras* should invoke the gods as described in the
“following procedure: Thereafter the Chief Judge with the flourish of music,
“with his face towards the east, and with folded hands bearing the fragrant
“odours, flowers and besmearings, should repeat the following (prayer)
“O God Dharma come, O, come, and be seated in this ordeal accompanied
“by the guardian Deities of the quarters and by the bands of the Vasus,
“Adityas and Maruts.

“After having invoked the God Dharma (to be seated) in the balance,
“thereafter the (other) parts should be distributed (as follows): Having
“seated Indra in the East, and the Lord of the Dead in the South, Varuṇa
“in the portion towards the West, and Kubera in the north, he should seat
“Agni and other guardian Deities of the quarter in the parts in the corners.

“Indra has the yellow colour, Yama the blue, and the colour of
“Varuṇa is like that of the *Sphaṭika* stone. Kubera, moreover has he
“luster of gold, and the god of fire also possesses the golden hue. Similarly
“the Nirritiḥ is known to be blue and Wâyu (the god of wind) smoky.
“Is'âna is however red. Thus should all these be invoked in the order
“(mentioned above).

“A wise man should worship the Vasus on the southern side of Indra,
“Dhara, Dhruva, and similarly Soma, Âpa, Anila, Nala, Pratyûsha, and
“Prabhâta are known as the eight Vasus.

“Similarly the group of the Âdityas should be placed between the
“Lord of the Gods and the Îśâna. Dhâtâ, Aryamâ, and Mitra, so also,
“Varunaḥ, Ans'uḥ and Bhagaḥ, likewise Indra, Vivaswân and Pushâ and
“Parjanya known as the tenth; then Twashtâ and then Vishṇu not the last
“though born of the last[1] these are the twelve Adityas described by their
“names.

“The point towards the west of Agni is known to be the place for the
“Rudras, Vîrabhadra, S'ambhuḥ, Giriśa of great fame, Ajaikapâd, Ahir-
“bhudhnya, Pinâki the never-defeated; so also Bhuvanâdhîśvaraḥ, Kapâlî,
“the lord of the people, Sthâṇuḥ, Bhavaḥ and Bhagawân are known to be
“the eleven Rudras.

“Between the Lord of the dead and Raksha a place should be assigned
“for the mother deities *viz*: Brâhmî, Mâheśwarî, and also Kaumâri, Vaish-
“ṇavi, Vârâhi, Mâhendrî, and Châmmundâ accompanied by the bands of
“followers.

“The point to the north of Nirriti is known to be the place for Gaṇeśa
“and the place for the Maruta is said to be at the northern side of Varuṇa:
“Ganganaḥ, Sparśavaḥ, Vâyasḥ, Anilaḥ, and also Mârutaḥ, Prâṇah, and
“the two *viz*. Prâṇes'a and Jîva are known as the eight Maruts. A wise
“man should invoke the goddess Durgâ at the northern side of the balance.

“The worship of these deities is however known to be by (repeating)
“their own names. Having offered worship to the God Dharma commencing
“with the arghya and ending with decorations &c.; thereafter a similar
“worship should be offered to the other deities *viz*. commencing with the
“*arghya* and ending with decorations the service should commence with
“*gandha* (sandal-paste) and end with *naivedya*.”

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[1] *i. e.* the last order, or the Suudras *cf.* “एकादशस्तथा त्वष्टा द्वादशो विष्णुरुच्यते । जघन्यजस्तु सर्वेषामादित्यानां गुणाधिकः ॥” महाभारते I. 65. 16.

Here, moreover having duly constructed a balance adorned with buntings and flags, and having invoked thereon the God Dharma with the hymn—"Come, O come &c.", and with the formula, "I offer this Arghya to Dharma &c." having offered *Arghya*, *pâdya* and water *madhuparka* and water again, a bath, clothes, the sacred thread and the water ending with the offer of the crown, the bracelets and other ornaments, and then to other deities commencing with the god Indra and ending with the goddess Durgâ, with the repetition of ॐ at the beginning of the name of each deity and with the dative case at the end and having offered worship to them commencing with the *arghya* and ending with decorations, he should then offer to the god Dharma the *gandha* (sandal paste), flowers, burnt perfumes, light and the *Naivedya* and then should offer as before to the god Indra and others the worship commencing with *gandha*. The sandal and flowers for the worship of the balance should be (of a) red (colour), as says **Nârada**: "First (he) should offer worship &c. to the balance with the red sandal-paste, red flowers, curddled milk, fried puddings the rice grains &c. and then he should do honour to the respectable (people present there)." Of Indra and the other gods the worship may be (offered) with red or other flowers such as are available (at the time) as no special rule has been mentioned. Thus should be the order of worship.

* Page 63.

All this, moreover, the Chief Judge should do. As has been said[1] "Then the Chief Judge, a Brâhmaṇa who has completely mastered the Vedas and the Vedangas, who has fitted himself by his learning as well as his conduct, whose mind is calm, and who is free from feelings of jealousy, who is the essence of truthfulness, who is pure, and who is watchful and devoted to the welfare of the beings, who has observed a fast and who after cleaning his teeth has worn a clean cloth, should do worship to all the deities as prescribed by the ordinances." Moreover, a sacrifice should be offered in the *Laukika* fire by the four *ṛitwijas* in the four quarters, as is said[2]: "Similarly a sacrifice should be offered in the four quarters by those who have completely mastered the Vedas, by means of ghee, and holy articles of sacrifice, and with the *samidha* which are the (usual) means of a sacrifice, by repeating the Sâvitri and the Praṇava mantras with the words *swâhâ* at the end of each." The meaning is that each of the three articles *viz* the *samîdh*, ghee and the rice should be offered 108 times each with the repetition of the *gâyatri* with the *praṇava* at its commencement and again wth the addition of the *praṇava* after the offer at he end of the words *swâhâ*.

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[1] **By Nârada.**

[2] **By Pitâmaha.**

Thus having performed the worship of the deities with the sacrifice as the last, thereafter, having written on a leaf the subject-matter of dispute, it should be placed on the head of the person wishing to perform the ordeal. As has been said[1] : " Having written on a leaflet, whatever is the subject-matter of the accusation, it should be placed on the head with (the repetition) of this mantra." The Mantra, moreover is this : "The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the god Yama, the day as well as the night, and the two evenings, and Dharma, each one knows the actions of men." Moreover this part of the ceremonial commencing with the invocation of the Dharma and ending with the placing of the leaf on the head, is common to all the ordeals, as has been said : " The whole of this ceremonial preceding the *Mantra* should be observed in all the ordeals ; similarly should be observed the invocation of gods. "

Thereafter the chief Judge should invoke the balance *vide* the text[1] " One knowing the S'âstra should also invoke the balance with this formula' "and the *mantras* also have been indicated *viz* : " O balance, you have " been created by the Creator for testing the sinful. From the letter *dha* "(in your name) you are the incornation of Dharma ; and since from the "letter *ṭa* in your name you determine a guilty individual when he is "weighed (in you), therefore you are known as the *dhaṭa*. You know the " sins as well as the good deeds of all beings. O God, you alone know those "things which mortals do not know. This man who has been accused in a "judicial proceeding wishes to establish his innocence, therefore, O " Lord, you should be pleased to save him from this suspicion according "to the rules of Dharma." The person wishing for an acquittance however, should invoke the balance with the *mantra* given above *viz* " O balance &c. " Thereafter the chief Judge shall place in the balance the person wishing to perform the ordeal and having placed on his head, the leaf and after seating him in his proper place. *vide* the text[1] : " Should sgain be seated in it, after having placed the document on him." And while so seated he should be made to sit in that condition for an interval of five *Vìnâḍis* ;[2] and one knowing the science of astronomy should determine this interval of time. *vide* the text[1] : " One knowing astronomy and who is the best of Brâhmaṇa should determine the interval of time ; the interval of five *vinâdis* should be determined by those who are experts in determining time. The interval required for pronouncing ten long letters is known as a *Prâna* ; six *prâṇas* make a *vinâdi*. It has also been said : " (the interval required for pronouncing) Ten long letters is called a *prâṇa*, six *prâṇas* make a *vinâdi*, sixty of these a *ghati*, and of sixty *ghatis* is said to be made a day and night." With 30[1] days is made a month. Moreover pure men should be appointed by the king for determining the acquittance or non-acquittance during this interval, and these will declare the acquittance or non-acquittance, as has been said by **Pitâmaha**: " Among the umpires the best Brâhmaṇas who would depose only such as has been seen by them, who are wise, pure, and who are not covetous. Umpires of (such a) high character will then inform the king of (his) innocence or non-innocence. The condition for determining the innocence or non-innocence has moreover been laid down[2] thus: " If, on being weighed, he rises, he is undoubtedly innocent. If his weight remains the same as before, or if he goes down, he cannot be acquitted." As to what has been said by **Pitâmaha**:—" One who will show an equal weight is guilty to a small extent, while those whose guilt is large, goes down."—there although the smallness or largeness of the matter under complaint cannot be determined by an ordeal,[3] still the smallness or largeness of the punishment would be determined thereby—*viz* the (punishment) would be small if the act is done only once or unintentionally, while it would be great if the act is repeated more than once or has been committed intentionally. When, moreover, without any austensible cause, the scales &c. burst or break, even then, there is a non-acquittal *vide* the text[4]: " Should the base burst, or the scales break or the beams or the hooks split, or the strings burst or the transverse beam break, a non-acquittal should similarly be declared (as stated before)" *Kakshâ* is the base of the balance; the two *Karkaṭas* are the two iron-hooks slightly bent, fixed at the two ends of the balance to support the scales and resembling the horns of a crab (कर्कट). The *Aksha* is the piece of the beam to be placed on the two base-pillars, for holding the balance. When, however, these break on account of a cause which is ascertainable, then he should be placed again, *vide* the text: " In the case when the scales &c. burst or break the man should again be placed."

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[1] By Nârada.

[1] By Pitâmaha.

[2] विनाडी see further on, a measure of time equnal $\frac{1}{60}$th part of a *Ghali*—24 Seconds.

* Page 64.

Thereafter " The king should please *Ritwiks*[5] *Purohitas* and *Âchârya* by means of *dakshinas*. A king causing these to be made in this manner, after having enjoyed (all) the pleasures of enjoyment, obtains great reputation and is entitled in the end to absolution."

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[1] खाग्निभिः—ख–the sky–0, & अग्नि–3; and according to the general rule अंकानां वामतो गतिः ३०–३०.

[2] By Nârada. I. 283.

[3] *i. e.* the same having already been stated in the leaf placed on the man's head.

[4] Nârada I. 284 The text actually to be found in the edition of Dr. Jolly is, howevr quite the opposite of this : the last line there being शुचितः शुद्धिमादिशेत्—"shall pronounce a formal declaration of his innocence."

[5] A *ṛitwik* is the head-priest at a sacrifice ; a *purohita* is the head family priest and an *Âchârya* is one who imparts instruction in the Vedic lore. (see Yajn : I. 34, Manu. II. 140-143.)

When, however, the king wishes to maintain in the same condition and permanently the balance as described above, then he should build a house for it in order to protect it from damage from the crows &c. *vide* the text[1]: "A balance-house should be erected which should have a wide space which should be high and white-washed, where, the balance (once placed,) would not be damaged by dogs, or the *chândâlas* or crows. There also he should cause to be (invoked and) seated in several quarters the guardian dieties of the quarters and other dieties, and should cause their worship to be made there at the three changing periods of the day by means of sandal-paste, flowers and (other) unctions. He should have it protected by doors, store seeds therein, and have it watched by the guards, should cause the earth, water and fire to be placed therein and should not allow it to remain unattended[2]". Seeds *i. e.* of barley, rice &c.

Here ends the Ordeal by Balance.

The Ordeal by Fire.

Now the auther describes the *ordeal by fire* which comes in its turn.

Yâjñavalkya Verse 103.

After the hands of one, by whom rice have been rubbed have been marked, seven leaves of As'vattha should be placed on them, and as many (rounds of) threads should be coiled around.[3]

Mitâksharâ:—With the general rules of procedure laid down for ordeals having been complied with, and after the ceremonial of placing the document on the head, as described in the ordeal by balance, has been gone through, this special rule (of procedure) is laid down in the case of the ordeal by fire.

(One) by whom rice have been rubbed (**Vimriditavrîhi**) one who has rubbed *i. e.* pressed the rice with both (the palms of) his hands, such a one is called "a *vimriditavrihi.*" After the *hands* (**Karân**) of him *have been marked* (**lakshayitwâ**) *i. e.* marked with the juice of red lac &c. those

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[1] Of Pitâmaha.

[2] *i. e.* the place should not be left deserted; a guard should always be placed to protect the machinery and to heep its being kept in tact.

[3] Known as पिप्पल. The *Ficus Religiosa.*

parts bearing a spot, a curl, a scar or a corn &c. as says **Nârada**[3] : "All sores or scars on his hands should be marked with signs[4]" Thereafter *seven leaves of Aśwattha* (**Saptas'watthasya parṇâni**) *should be placed* (**nyaset**) on the two hands joined together, *vide* the text[5] : "Having covered his two hands joined together with seven *Aśwattha* leaves of equal size" These, moreover, together with the hands should be *coiled round* (**veshtayet**) with thread, as many times as there are the *aśwattha* leaves *i. e.* the meaning is that it should be coiled in seven rounds. The threads moreover should be seven and white *vide* the text of **Nârada** : "The two hands should, covered round by seven strings of white thread." Then seven leaves of *S'ami*, also seven blades of the *Dûrwa*[6] grass, and the rice *akshtas* as also rice besmeared with curds, (all these) should be spread over the *aśwattha* leaves. *vide* the text : "He should spread seven *pippala* leaves the *śami* leaves as also the rice, seven blades of the *dûrwâ* grass and rice besmeared with curds." Also should the flowers be spread. *vide* the text of **Pitâmaha** : 'Seven leaves of *Aśwattha*, the rice, flowers and curds should be placed on the two (palms of the) hands, and then the same should be coiled round'. *sumanasaḥ* means flowers. Although there is a text *viz.* "He should be considered pure who remains unscatheed at the seventh step while bearing the heated iron in his hands covered with seven leaves of the *Arka*[7] tree, still that should be understood as meaning that the *arka* leaves are to be taken in the absence of the *Aśwattha* leaves, as the importance of the *aśwattha* leaves is inferrable from the text of **Pitâmaha** in praise thereof *viz*:—"From the *pippala* tree fire is produced, the *pippala* is known as the lord of trees ; hence a wise man should spread its leaves on the hands."

* Page 65.

The Author now mentions the *mantra* to be repeated by the person performing the ordeal.

Yâjñavalkya Verse 104.

O purifying fire thou pervadest the innermost parts of all created beings ; O omniscient, declare like a witness, the truth about me from my virtues and sins.

Mitâksharâ : *O fire, of all beings* (**Agne twam sarvabhûtamâm**) *i. e.* the viviparous and oviparous animals, the insects born of sweat as well as the plants ; *in the innermost recesses* (**antaḥ**) *i.e.* inside their bodies, *pervadest* (**charasi**) *i. e.* remainest there as the digester of all food and drink used, *purifying* (**Pâvaka**) *i. e.* the purifying cause, (O) *Omnicient* (**kave**) *i. e.* knowing all, *Declare like a witness the truth about me from my virtues and sins.* (**Sâkshivat puṇyapâpebhayaḥ satyaṃ brûhi**) The oblative case in the expression punya-papebyaḥ is formed by dropping the ल्यप्[1]. The meaning is that having observed my virtues and sins speak the truth (about me).

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[3] Ch. I. 301.

[4] A हंसपद् is the same as a काकपद् the sign.

[5] Nârada.

[6] The *Cynodon Dactylon*.

[7] The *Catotropics gigaistees*,

When the iron ball is well heated by the three fires and after it is brought out by means of a tong, the person desirous of performing the ordeal standing in the western enclosure with his face towards the east, should invoke the fire by means of this *mantra* as says **Nârada**:[2] "An iron ball fifty Palas in weight, having been made fiery, sparkling and red-hot, and after it has been heated thrice, thus should one address it in the language of truth." The meaning of this is—In order that the iron may be purified, the iron ball which has been well heated should be thrown into water, and again heated and again thrown into water and heating it a third time in the fire, and having then brought it forth by means of a tong the performer (of the ordeal) should address it in the language of truth *i. e.* containing truthful words, with the *mantrâ* "O fire thou pervadest all created beings &c."

The chief Judge, however, having kindled the fire called *Laukika*[3] towards the southern side of the enclosure, should offer 108 times the oblations of ghee with the *mantra* "This is being offered to fire the purifier" *vide* the *text*: "The (oblations of) ghee a *108* times." Having offered the oblations, and having thrown the iron ball into the fire, while the same, lying there, is being heated, he should perform the ritual described before commencing with the invocation of the god *dharma* and ending with the offer of oblations, and while the ball is lying being heated the third time, he should address the fire in the (heated) iron ball by the following invocation :—

"O fire thou art the four Vedas (themselves incarnate), and to thee are "oblations offered in sacrifices. Thou art the mouth of all gods, thou art "(also) the mouth of the philosophers. Being in the abdomen of all beings "thou knowest all their good and bad deeds. Since thou purifiest the sins "thou art called the purifier. In the case of sins, O fire, exhibit thyself

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[1] *i. e.* the gerundial य in वीक्ष्य. Instead of the fuller-clause "having seen my virtues *&c*" the construction used is from my virtues and sins.

[2] Ch. I. 289–290.

[3] *i. e.* ordinary; as distinguished from special fires kindled on special occasions.

"*i. e.* appear in flames, O thou holy purifier! while in case of purity of "the heart, be cool O, consumer of all oblations. O fire thou movest in the "hearts of all gods as a witness. O god thou alone knowest those things "which no human being knows. This mortal, being accused at Law wishes "to get himself cleared ; therefore it behoves thee to free him from this "charge according to the sacred Law or *Dharma.*"

Yâjñavalkya Verse 105.

After he has addressed in that manner. he should place in both his hands a smooth ball of iron weighing fifty palas and red (heated) like fire.

Mitâksharâ:—Moreover, *of him* (**tasya**) *i. e.* of the performer (of the ordeal) while *addressing* (**uktavataḥ**) *i. e.* while invoking with the *mantra*: " O fire thou pervadest the innermost parts of all beings &c. " An *Iron* (**lauham**) *i. e.* made of iron, *ball* (**pindam**), *weighing fifty palas* (**panchâs'atpalikam**) *i. e.* of the quantity of fifty *palas*, *round* (**samam**) having no angle *i. e.* rounded and even on all sides and polished and eight fingers in length, *vide* the text of **Pitâmaha**. " After removing all angles and making it even, a ball of iron of eight fingers weighting fifty *palas* should be heated in the fire, " *Red like fire* (**agnivarṇam**) *i. e.* resembling fire. *In both hands* (**ubhayoḥ hastayoḥ**) covered with the *aśwattha* leaves, curds, the *durwâ* grass and other things, *should place* (**nyaset**) *i. e.* the chief Judge should deposit.

What then should be done ? So the Author says.

Yâjñavalkya Verse 106. (1)

He having taken it (into his hands) should walk through only seven circles slowly.

* PAGE 66.

Mitâksharâ:—*He* (**sa**) *i. e.* the man, having taken the heated iron ball in the cavity of his hands *should walk seven circles slowly* (**sapta mandalâni s'anaiḥ vrajet**). By the use of the term *only* (**eva**), the Author indicates that the foot-steps should be placed within the circles, and that he should not go beyond the enclosure, as says **Pitâmaha**, " He should not go out of the enclosure, nor should he put his foot inside (the rim)."

It has been said above that "he should walk through only seven circles slowly." There a question may arise as to where are the measurements of one mandala each, and what should be the space intervening between two rounds? so the Author says.

Yâjñavalkya Verse 106 (2).

A Mandala or round should be understood to be sixteen fingers (in diameter), and the same should be the space intervening (between two mandalas or circles).

Mitâksharâ:—That (the length) of which is sixteen fiingures is '*a sixteen Angulas*' (**Shodas'ângulakam**). The circle should be understood to be of the dimension of sixteen Angulas. The space intervening *i. e.* the distance between two circles *i. e.* is (to be) the same. By saying however that he should walk through seven circles each of sixteen Angulas, is meant to include the first circle in which he is standing and therefore in all there would be eight circles of sixteen fingures each, while other circles (than the one at the centre) would be seven of the same dimension. This very thing has been stated by **Nârada**[1] by the method of enumeration thus: "The interval between every two circles is ordained to measure thirty-two fingures or *Angulas*. Thus the space covered by the eight circles will be a little more than two hundred and twenty four by the measure of *Angulas*." The meaning is this. The circle other than the first circle and at a distance of sixteen *Angulas* is the second circle. Each circle being removed further on from the second and at a distance of thirty two *Angulas* from the first circle, leaving a space of sixteen Angulas. Thus seven circles should be gone round each having an intervening space of thirty-two *Angulas*. Thus the space of ground intervening between the seven *mandalas* would be Two hundred and twenty-four *Angulas* in terms of *Angulas*. The suffix तस् is used to indicates all cases. According to this view, after having made the central round of sixteen *Angulas* in measurement, each one of the intervening spaces measuring thirty-two angulas and lying between the seven *mandalas* should be divided into two, and the ground of the intervening space should be fixed at sixteen *Angulas*, seven mandalas should be created measuring twice sixteen angulas the breadth of each being according to the measure of the foot of the person who has to go-round. As has been said by the same Author:[2] "A round should be made as broad as his foot."

As to what has been said by **Pitâmaha** *viz*: "Eight circles should be made, and also a ninth in the front: The first circle should be dedicated to the god *Agni* (fire), the second to (the god) *Varuṇa* (water), the third to the God *Wâyu* (wind), and the fourth to the God *Yama*; the fifth is conscerated to the God *Indra*, and the sixth is said to be for *Kubera*; the seventh is for the God *Soma* and the eigth to the Sun and the ninth is for all Gods. This is the practice known to all experts in ordeals. The interval of space between every two circles is ordained to measure thirty-two Angulas. Thus the space covered by the eight circles will measure two hundred and fifty-six Angulas. A circle should be made as broad as the foot of the person performing the ordeal. The *kuśa* grass should be spread over all the circles as dictated by the *S'âstra.*" There (the meaning is that) after making the ninth circle which is intended for all gods and which is unlimited by any measurement of Angulas, the eight circles and the eight intervening spaces together cover a space of two hundred and fifty-six Angulas. There also (the number of) circles (actually) to be walked through would be seven only. Since he stands in the first and throws down the ball in the ninth, and so there is no difference as to the measurement of Angulas. "Eight slanting barleys or three rice corns make one Angula, twelve *Angulas* make one *Vitasti*, two *Vitastis* make a *Hasta*, and four *Hastas* one *Danḍa.* One thousand of these (*i. e. Dandas*) make one *Kośa* and four of these (*i. e. kośas*) make one *Yojana.*" Thus should be understood (the table of measurement).

Yâjñavalkya Verse 107 (1).

After he has thrown away the (ball of) fire and rubbed his hands with rice, if he is (found to be) unburnt, he should obtain an acquittal.

Mitâksharâ:—Standing in the eighth circle and after throwing away the iron ball heated with fire, having pressed the rice corns with both his hands, if it is found that his hands remain unburnt *he should obtain an acquittal* (**s'uddhim âpnuyât**). It follows from this that if his hands be burnt he is considered to be guilty. One, however, who through a fright stumbles and is burnt elsewhere than on the hands, even then he is not considered as guilty. As says **Kâtyâyana** "If while under a charge one stumbles and is burnt elsewhere than at the proper spot, the Gods consider him as unburnt and he should be awarded the entire claim."

* PAGE 67.

Yâjñavalkya Verse 107 (2).

If the ball falls down on the way, or in the case of a doubt, he should carry (it) again.

Mitâksarâ:—If while (he is) walking, the ball falls *on the* way (**antarâ**) *i. e.* even before the eighth circle is reached, or if *a doubt* (**sans'ayaḥ**) arises as to whether he is burnt or unburnt, then *he should carry it again* (**tadâ punrâharet**). This is the rule laid down and as necessarily follows from the sense. Here, however, the following is the order of procedure. Having performed the purification ceremony on the previous day, the next day, the chief judge should mark the circles according to Shâstra, worship the presiding deities of the circles in their respective places, consecrate the sacred fire and complete the *S'anti* sacrifice, and then after causing the ceremony of the consecrations of the hand by the pressing of the rice corns &c to be made of the person performing the ordeal who had observed a fast, and who after having bathed was standing with wet garments in the western circle, and after tying on his forehead the leaf containing the charge by repeating the *Mantra*, the Chief Judge should invoke the God fire ,when the ball is heated a third time, and lifting with a tong the heated iron–ball which had been duly addressed (by the performer) he should place it in the hand of the person performing the ordeal. And this latter if after walking through seven circles and throwing down the ball in the ninth remains unburnt, then he is declared innocent.

Here ends the ordeal by fire.

Now (follows) the ordeal by water.

Yâjñavalkya Verse 108.

Having invoked water with the *Mantra*: " O Varuṇa, thou shouldest protect me for (the sake of) truth ", one should enter the water catching hold of the thighs of one who was standing in the water navel-deep.

Mitâksharâ :—" *O Varuna thou shouldest protect me for (the sake of) truth* (**Varuṇa satyena Mâmabhiraksha twam**), by this mantra having *invoked* (**abhis'âpya**) *i. e* addressed **kam** *i. e.* water, catching hold of the thighs of *one who was standing in the water navel-deep* (**nâbhidadhnodakasthasya**) *i. e.* of a man who was standing in water to the height of his navel, the person wishing for purification *should enter the water* (**jalam pravis'et**) *i. e.* should immerse himself in water.

This moreover should be done after the worship of the God Varuṇa has been finished, *vide* the text of **Nârada** : " He should first offer worship to the God Varuṇa with concentration by means of fragrant besmearings and flowers and by means of honey, milk, ghee &c. " Similarly after the general procedure is observed *i. e.* that beginning with the invocation of *Dharma* and ending with the worship of all the deites, the performance of the sacrifice and the placing on the head of the document containing the plaint. For, after the Chief Judge has addressed the water *viz:* " O water, thou art the life of all sentient beings, wert created before the creation; thou hast been mentioned as the means of the purification of things as well as of corporate beings, hence O discriminator of the auspicious from the inauspicious thou shouldest exhibit thyself". The person wishing for an ordeal should then invoke Varuṇa with the *mantra* " O Varuṇa protect me for truth &c ". The places for water, have, moreover been mentioned by **Nārada**[1] " In streams which have a smooth current, in rivers, in lakes, in ponds, in holy ponds, in tanks and in pools". So also (has been said) by **Pitāmaha**: " He should plunge in water which is steady, and not in which are crocodiles nor which is shallow. He should make the purification in that water which is in the holy ponds, which is devoid of grass or moss, and which is free from leeches and the fish. One should always avoid the water which has been brought as also the water in swiftly flowing rivers. He should always enter such water as is free from waves and mud." *Brought*, *i. e.* water brought from tanks &c and stored in copper pans.

The man standing in the water navel-deep should by firmly grasping a consecrated pillar made of the holy tree stand with his face towards the east, *Vide* the text.[2] " He should stand in water with his face towards the east and grasping a sacred post."

Yâjñavalkya Verse 109.

When another swift runner brings back the arrow discharged simultaneously (with the immersion) and if he sees him with his (entire) body immersed in water, he obtains an acquittal.

Mitâksharâ:—When, simultaneously with the immersion (of the defendant) one swift runner had gone, *another swift runner* (**anyaḥ javi**) standing at the place where the arrow had fallen, brings back the arrow first discharged and if he sees him (*i.e.* the person performing the ordeal) (still) immersed in water then he is declared innocent. This is the substance of what is (meant to be) said:—After three arrows are discharged a man endowed with a velocity goes to the place where the middle arrow has fallen, and taking it up stands there also. Another swift runner stands at the bottom of the arch *i. e.* the place from where the arrows are discharged. After the two are thus stationed, the person performing the ordeal immerses into the water at the third clap of the hand (of the Chief Judge.) And even simultaneouly with this the man standing at the base of the arch goes swiftly to the place where the middle arrow had fallen, and immediately after his arrival there the one standing with the arrow held in his hand swiftly going to the base of the arch if he does not see him (*i. e.* the performer of the ordeal) on account of his being immersed in water, then he is declared innocent. This very thing has been made clear by **Pitâmaha**: "The running and the immersion (respectively) of the runner and of the performer of the ordeal should be simultaneous. A swift runner should go from the base of the arch to the spot where the arrow has fallen. Immediately after his arrival there, the second also quickly taking up the arrow should go to the base of the arch from where the first man started. If the one with the arrow in his hand, does not find him after his arrival (at the base of the arch) because he was completely immersed under water, then he should declare his innocence." **Nârada,** moreover, has laid down the rule for determining the swift runners thus: "Those two men who would stand first in running among fifty runners, should be appointed for the purpose of bringing back the arrow." The arch also should be erected on a level ground near the place of immersion, and equal to a height as far as the ear of the person performing the ordeal. *Vide* the text of **Nârada**: "Having reached the place near the water an arch as high as the height (of the performer) upto the ear should be erected on a level ground"

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[1] Ch. I. 285-286.

[2] Narada I. 299.

* Page 68.

The three arrows as also the bow made of bamboo should first be worshipped with auspicious things such as white flowers &c. *vide* the text of **Pitâmaha,** "First the arrows he should worship, as also the bow made of bamboo by means of auspicious articles such as smelling odours, flowers &c. and then should he begin the procedure."

The measurement of the bow as also the place of the target have been mentioned by **Nârada**[1] "A strong bow is declared to be 107[2] (Angulas) long, a moderate bow 106, and an inferior bow 105 (Angulas). This is declared to be the rule regarding the bow. With the moderate bow a wise man should discharge three arrows having fixed the target at a distance of 150 Hastas; if arrows are thrown at a less or a greater distance there would be a flaw." *A hundred and seven* (107) means one hundred, and seven of Angulas. this is a strong bow. Similarly also about 106 and 105 (respectively). Thus the dimension of a strong bow has been mentioned to be eleven Angulas in excess of four Hastas, of a moderate bow, ten Angulas, and of an inferior bow, nine Angulas. The arrows moreover should be made of bamboo without an iron, *vide* the text[1] "For the purification, arrows should be prepared of the bamboo tree without any iron at the end, and the person discharging it should discharge forcefully". The person for discharging the arrow to be appointed, should be a Kshatriya or a Brâhmaṇa living like a Kshatriya, and one who has observed a fast as has been said:[2] "The person to discharge (the arrow) has been laid down to be a Kshatriya, or a Brâhmna living like him. He should not have any cruel thoughts in his mind, must be calm and must have observed a fast, and then should discharge (the arrow)." Of the three arrows when discharged, the middle one should be taken since it has been so laid down in the *Sâstra*, *vide* the text[3]: "The middle-most arrow, however, should be taken up by a strong man." There also, the arrow should be brought from the place where it falls not to where it moves *vide* the text: "The place where the arrow falls should be considered, while the spot where it moves should be avoided, since an arrow may go a long distance by moving and moving." The arrow, moreover, should not be discharged when the wind is blowing violently, nor on a ground which is uneven &c. *vide* the text of **Pitâmaha**: "A learned man should not discharge the arrow when the wind is blowing violently, nor on a spot which is uneven, is covered by trees, or is covered by grass, bush, creepers, plants mud or stones."

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[1] Ch. I. 307.

[2] It may also mean 700, 600 and 500 Angulas respectively the original words being सप्तशतम्, षट्शतम्, and पञ्चशतम्.

By saying that "if he sees him with his entire body immersed in water he obtains an acquittal," the guilt has been declared of one whose body is seen above water. Where the person moves to another place A guilt has also been declared by **Pitâmaha** thus, "Otherwise there shall be no acquittal if even one limb is seen"–(also)–"Or by his going to a place other than that where he first was made to enter." The expression "if even one limb is seen" is used in reference to the ear &c. as there is a special text[4] viz: "He (the judge) may declare him also as innocent if after immersing into the water his head alone is seen and not the ears nor the nose."

The order of procedure here is this: Near the store of water as characterized above having set up an arch of the description given before, and having fixed the target at a place and at a distance as stated, having properly worshipped the bow together with the arrows near the arch and invoked Varuṇa in the store of water and offered worship to him, having moreover on the bank (of the water) offered oblations to Dharma and other gods at the end of a sacrifice, the Chief Judge should tie the document containg the plaint on the forehead of the person wishing to perform the ordeal

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1. Of **Katyayana.**
2. By Pitâmaha.
3. Of Narada I. 316.
4. Also of Pitâmaha.

and thus address the water with the *mantra*. "O water thou art the life of living beings &c." Then the person performing the ordeal having invoked the water with the *mantra*, "(protect) me from the truth" &c. should go near the strong man who has grasped firmly the pillar * PAGE 69. and who is standing in water navel-deep. Then, after three arrows are discharged, and after one swift runner has taken his stand at the spot where the middle arrow falls, holding in his hand the middle arrow, and another has stood at the base of the arch and when after this the Chief Judge has given three claps, the running, immersing and bringing back the arrow should simultaneously take place.

Thus ends the ordeal by water.

Now the author describes the ordeal by poison.

Yâjñavalkya Verse 110, 111.

"O poison thou art the son of Brahman. Truth and virtue are thy support. Clear me from this charge. Out of (regard for) truth, be like Ambrosia to me. (110).

"Having addressed thus, he should swallow the poison called S'aṛnga produced on the Himalaya mountains. The Chief Judge should declare the innocence of him in whose case the poison becomes digested without convulsions" (111).

Mitâksharâ: Having addressed the poison with the *mantra* "O poison &c." the person performing the ordeal should *swallow* (**bhakshayet**) *poison produced on the Himalaya mountain* (**visham himasailajam**) *i. e.* produced on the mountain top. And such a poison when swallowed by a man is digested without convulsions, such a one is declared innocent. Convulsions from poison occur by the transmission of one humour[1] of the body with another. *vide* the text[2]. "The transmission of humour of the body into another is known as the convulsion of poison." The humours, moreover, are seven *viz.* "The skin, blood, flesh, fat, bones, the morrow, and the semen". Thus the convulsions of poison would also be seven only. The characteristics of these have moreover been mentioned in the treatise on poison (**Vishatantra**) thus : "The first convulsion from poison brings on a horripilation, and the one next to it (causes) perspiration and the dryness of the mouth ; the two next following cause in the body the change of colour and violent tremour. That which is (called) the fifth convulsion brings on syncope, choking of the throat and the hiccough ; the sixth (creates) fast breathing and coma, and the seventh causes the death of the consumer (thereof.)"

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[1] धातु—A humour of the body. According to the principles of Aryan Medicine the principal humours which regulate the condition of the body are वात, (wind) पित्त (biles) *&* कफ (phlegm). A disturbance in the normal condition of any of these causes. all the diseases of the body. They are also classified into seven *viz.* त्वक्, असृक्, मांस, मेद, अस्थि, मज्जा & शुक्र.

[2] of Pitâmaha,

Here, moreover, a worship should be offered to the God Mahadev as says **Nârada** : "One who has observed a fast should administer (the ordeal of) poison in the presence of gods and the Brâhmaṇas, after having worshipped (the God) Mahes'wara by means of fragrant scents, codiments and with *mantras*." The Chief Judge after having observed a fast should worship the deity Mahâdeva and placing the poison before it, should offer worship to Dharma and others terminating with a sacrifice, and thereafter having placed the document bearing the plaint on the head of the person performing the ordealshould thus invoke the poison :—*viz* : "O poison thou hast been created by Brahman for testing the wicked. (therefore O) exhibit thyself in the case of the sinners, while be like Ambrosia to the pure-minded. O thou who art Death incarnate, thou hast been created by Brahman. Free this man from this (charge of a) sin and become nector to him by (regard to his) truth."

Having thus invoked it, he should give it to one who is standing with his face turned towards the south *vide* the text of **Nârada** : "With his face turned towards the North or the East and with a concentrated mind he should administer poison to one who is standing with his face towards the South, and also in the presence of the twice-born.

The poison moreover to be taken should be the *Vatsanâbha* poison or the like. *vide* the text of **Pitâmaha** : "Of the *vatsanâbha* from a mountain top or of a poison produced on the Himalayas." The poisons to be discarded have similarly been laid down : "Distilled poisons, as also poisons which are old or are artificially prepared, and those produced from the earth—all these poisons should be entirely excluded." Also by **Nârada**[1] : "Purified poison, as well as poison which has been distilled, similarly, scented and mixed poison, as also the Kâlakûta and the Alâbu poison, should be carefully avoided."

The time also has been mentioned by **Nârada**[2] : "Having weighed the poison which is intended (to be given) it should be given at a time when the winter sets in. A man knowing the Dharma must not (administer it)

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1. Ch. I 321.
2. Ch. I 319 and 320.

in the afternoon, nor in the noon nor in the twilight." In any other period, however, a less quantity than that laid down as the standard, should be given *vide* the text[1] " Four yavas should be given in the rainy season, and it has been laid down that five yavas should be given in the Grishma. In the Hemanta it should be seven yavas and in the Sarad even less than that" By less is meant six yavas. By the mention of Hemanta, Śiśira also is included *vide* the s'rûti text *viz* : " By the combination of Hemanta and Sisira"

* Page 70.

Since Vasanta also has been regarded as a common period for (the administration of) all ordeals generally, seven yavas should be given during that season and the poison also should be given after it is covered with clarified butter. *vide* the text of **Nârada**[2] : " Let him give to the person performing the ordeal, one-eighth less than the twentieth part of a sixth part of a Pala of the poison, mixed with clarified butter." A Pala here, moreover, is equivalent to four gold coins. Its sixth part would be ten Mâsha and fifteen yavas. Three yavas make one Krishṇala and fifteen Krishṇalaks make one Mâsha ; thus fifteen yavas make one Mâsha. In this way the (number of) yavas in ten[3] Mâshas would be one hundred and fifty and this together with the ten yavas mentioned above make up (the total of) 160 yavas—this is the sixth part of a Pala. A twentieth part from this would be 8 yavas. A twentieth part less by one-eighth of this *i. e.* less by one yava *i. e.* seven yavas he should give mixed with clarified butter. The clarified butter should moreover be taken thirty times the (quantity of) poison *vide* the text of **Kâtyâyana** : " The poison should be administered to men[4] in the forenoon and in a cool place, it should be pounded and smooth and should be mixed with clarified butter thirty times the quantity (of the poison)" *i.e.* the poison (should be) mixed with clarified butter thirty times its quantity.

The person performing the ordeal should, moreover, be protected from sorcers &c. *vide* the text of **Pitâmaha** *viz.* " The king should protect the person about to perform the ordeal from the danger of sorcerers &c. by guarding him with his own men for three or five days. He should also examine and see if there are hidden on his body any medicines, or spells, or any jewels which are effective as antidotes against poison as also those secretly produced." Similarly the poison should also be guarded. *Vide* the text of **Nârada**[5] : " Poison from the mountain top which is obtained from the Himalayas, is of an excellent quality has the colour, flavour and taste, which is unartificial, not tempered, and which is not overpowered by any charms."

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[1] Nârada ch. I 324.

[2] Ch. I. 323.

[3] दशानां is a better reading. पञ्च दशानां appears to be wrong.

[4] देहिनाम् Lit: corporate beings.

[5] Ch. I 322.

Similarly after the poison has been swallowed he should be watched for (an interval of) 500 claps of the hands, and thereafter should be examined as says **Nârada** : " If after an interval of 500 claps of the hand he remains free from any effect (of the poison), then he is considered to be innocent; thereafter he should be examined" The interval of time however stated by **Pitâmaha** *i. e.* till the end of the day, has a reference to a small quantity of poison. " After swallowing it if he remains steady and without a swoon, and does not vomit and otherwise remains free from any effect till the end of the day, he should then be declared as innocent." Here also the procedure is as follows, the Chief Judge after having observed a fast and worshipped the God Mahâdeva should place the poison before it, and after having offered a sacrifice to Dharma and other deities, and placed the document containing the complaint on the head of the person wishing to perform the ordeal, should address the poison and offer it to him who is seated with his face turned towards the South ; the person performing the ordeal too should take the poison after addressing it.

Here ends the ordeal by poison.

Now the author describes the ordeal by *Kos'a.*

Yâjñavalkya Verse 112.

Having worshipped the stern deities, he should collect the water in which they were bathed. Then after reciting (the formula), he should make the person drink therefrom three handfuls of water.

Mitâksharâ—*Stern deities* (**Ugrân Devân**) *i. e.* such as Durgâ, Âditya &c. *Having worshipped* (**samabhyarchya**) *i. e.* worshipped with the sandal-paste, flowers &c. and after having bathed *he should collect the water in which they were bathed* (**tat-snânodakmâharet**). After collecting it, the chief Justice should address it with the *mantra* " Oh water, thou art the life of all sentiment beings &c.", and putting that water into another vessel he should *cause three handfuls of the water to be drunk* (**Pâyayet prasṛititrayam**) by the person performing the ordeal after the repetition of the *mantra*, " O Waruṇa protect me for truth &c." This moreover should be done after the general procedure *viz*, the invocation of Dharma, the worshiping of all deities, the offering of the sacrifice and the placing (on the head) of the document containing the complaint &c. has been observed.

Here also, the rule as to the deity to be bathed, the rule as to the procedure as also the rule as to who is entitled to this ordeal have been stated by **Pitâmaha** thus: " Of that deity whose devotee he is, the water should be caused to be drunk by him. In the absence of a (particular) deity, the water of Âditya should be given to be drunk. The water of Durgâ should be given for drinking to the thieves as also to those who make a living upon their weapons. The water of the Sun should not be given to be drunk by a Brâhmaṇa. The tridant of Durga should be bathed, while of Aditya, the circle should be bathed, so also the weapons of other deities too should be bathed " This is the rule about the deities.

The rule as to procedure is : " The drinking of the *Kosâ* water is ordained in the forenoon for one who has observed a fast, has bathed and has a wet cloth on, who is a believer and who is free from vices" *Saśûka* is a believer : " The wise should not offer the *Kośa* to the drunkard, to voluptuous as also to the rogues and to those who are disbelievers. The[1] drinking of *Kośa* should be avoided in the case of great criminals, irreligious or ungrateful men, eunuchs, low Brâhmaṇs, unbelievers, Vrâtyas and slaves." *Mahâparâdha* means a great crime. *Irreligious i. e.* who does not observe the duties laid down for the Varṇas in the several stages *i. e.* who is an atheist. Lowborn *i. e.* born of a Pratiloma union. *Slaves i. e.* fishermen. This is the rule as to the capacity of persons.

* Page 71.

Moreover after preparing a circle of cow-dung the person wishing to perform the ordeal should be seated facing the sun and then he should be made to drink. This is the rule to be deduced from the text of **Nârada** " Having called him who has been accused, and made him seated in the centre of a circle and with his face towards the sun, he should be made to drink three handfuls " (112).

It may be asked, in the case of ordeals begining with the balance and ending with the poison the decision as to the innocence or guilt is immediate, what however in the case of koṣa? so the Author says.

Yâjñavalkya Verse 113.

He on whom no calamity falls either by the act of God or of the King, within fourteen days, is innocent (and) there is no doubt.

Mitâksharâ:—Before *fourteen days* (**Chaturdas'âdannhaḥ**) *on whom* (**yasya**), *by the act of the king* (**râjikam**) *i. e.* by reason of the king (or)

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[1] Nârada I 332.

by the act of God (**Daivikam**) *i. e.* caused by God, **vyasanam** *i. e.* trouble, **ghorum** *i. e.* great, *is not* (**no**) *i. e.* certainly never *falls* (**jâyate**)—a minor one being unavoidable in the case corporate beings—*he should be* considered to be *innocent* (**Sa s'uddhaḥ**). If it fall after the interval there is no blame. As says **Nârada**:[1] " If a great misfortune even should befall him after the lapse of a fortnight, he must not be harassed by any one, since the fixed period has elapsed." This text is self-apparent. The rule " within fourteen days " is with referrence to serious charges, since it comes to be mentioned after the prefatory observation. " These in the case of serious charges[2]." The other intervals mentioned by **Pitâmaha** have a reference to petty charges *vide* the text. " The *kosa* may be administered even in " petty case. " These are (as mentioned in the text[3]): " He in whose case a misfortune is seen within three, seven, twelve or fourteen days, is considered to be guilty." These three intervals of time have to be adjusted by dividing the amount at stake which is less than the amount of a serious charge,[4] and by allotting the periods of three days &c. to each portion respectively.

Thus ends the ordeal of *Kos'a*.

The five principal ordeals beginning with the balance and ending with the *Kośa*, have been expounded as proposed by the Lord of the Yogis.

Rice.

Other ordeals have been mentioned in another smriti having a reference to petty complaints as says **Pitâmaha**:[5] " Now " I proclaim the rule regarding the grains of rice which " have to be chewed (by the party). This rice ordeal " should be administered in cases of larceny, but on no other occasion " whatsoever. This is certain. Let the judge who must have cleansed " himself previously use white grains of rice, and not of any other "(corn) and let him place the same in an earthern vessel in the sight of the "sun. Atfer having mixed them with water used for the bath (of the "image of the sun), he shall cause it to remain there. (In the next morning) "one who has observed a fast and has bathed, on whose head the document "containing the complaint has been placed and who is seated facing "towards the East, should be asked to chewe the rice-grains and then to "spit (the same) on the leaf of the holy fig tree and of none else, and when "that is not available then on the leaf of a Birch tree. He whose blood

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[1] Ch. I. 331.

[2] See above yajn. Ver. 95 L. A.

[3] Of Pitâmaha.

[4] *i. e.* 1000 panas.

[5] *cf.* Also Nârada ch. I. 337-342.

"issues forth or whose chin or palate becomes rotten, or the limbs shake, "must be pronounced guilty."

The Chief Judge should cause one on whose head the document containing the complaint has been placed, to chewe the rice grains snd to spit.

The form " having caused to chewe" is general. The general procedure which is common to all ordeals viz. the invocations of Dharma &c. should be followed here also.

Thus ends the ordeal of rice.

Heated Mâsha.

The ordeal of the heated *Mâsha* has been described by **Pitâmaha** thus: " A circular pot measuring sixteen Angulas with a depth of four Angulas should be made either of gold, silver copper or of earth, of circular sige. " And the same should " be filled with clarified butter or oil weighing twenty " palas, and then when this is heated well, a gold *mâsha* should " be thrown into it. He *i. e.* the person performing the ordeal) "should raise the heated *mâsha* by means of the forefinger and one or two "fingers near it. He who does not shake his fingers or on whom no boil is "produced is deemed under the law to be innocent since his hand and "fingures were unhurt." By the expression " should raise" is meant simply picking up from the vessel and not " throwing out "

* Page 72.

Another process:—" the Judge after having cleansed himself, " should throw clarified butter of the cow into a golden, " silver, copper, iron or earthern vessel, and should heat " the same on fire. He shall then throw into it a polished " coin bearing an impression and made either of gold, silver, copper or iron. " The pot (which has been heated to boiling) in which waves and circles are " rolling and rising up and which is incapable of being touched even at the " nail-points (of the fingers,) he should test it by means of a green leaf " (being dipped into it) and thus producing a crisping[1] sound. And then he " should address it by the following *mantra* viz : " O clarified butter thou " art the purest of all things, thou art the Ambrosia at a sacrifice.. Burn this " man, O purifier, if he is guilty, and be as cold as ice if he is innocent." He " should cause the coin lying in the clarified butter to be caught by the per" son (wishing to perform the ordeal) who has observed a fast and who has " then bathed and has wet clothes on. The umpires should then examine " his forefinger. He on whom no boils are seen is to be considered innocent, otherwise he is guilty." Here also should be observed the ceremony of invoking Dharma &c. The address to the clarified butter is to be by the Chief Judge the *mantra* to be addressed by the performer of the ordeal is "O fire thou art of all sentiet beings &c." From the text "(they) should examine the forefinger," the picking up of the coin is to be made by the forefinger only.

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[1] चुरुत्कार is the particular sound which is produced at the combination of fire and water c/o the Marathi चुर्र.

Thus ends the ordeal of the heated *mâsha.*

Dharma and Adharma.

The ordeals of the Dharma and Adharma has been mentioned by **Pitâmaha**. thus: "Now I shall describe the test by Dharma and Adharma in the case of men who are guilty of assault, who are pressed for payment, and those who desire to perform the expiatory ceremony." *Guitly of assault i. e.* in charges of assault. *Who are pressed for payment i. e.* for wages or amounts falling due. *Who desira to perform an expiatory ceremony i. e.* in accusations of sins. The rule as to the image is this: "The (image of the) Dharma should be caused to be made of silver, while that of Adharma either of lead or of iron. He also mentions **another course.** "(The images of) Dharma and Adharma should be painted in white and black I (respectively) on the leaf of a birch-tree or on a cloth. Having anointed the same by means of the Panchagawya,[1] he should worship them with sandal-paste and flowers, the Dharma having white flowers while the Adharma holding black flowers. Thus anointed, the two should be placed on two balls. The balls should be prepared either of cow-dung or of earth and should be placed unseen an earthern pot which is unbroken and (the pot) should be placed in the front of the Gods and Brâhmaṇa on a spot which has been washed and cleaned. Then, as mentioned before, the guardian deities he should invoke and after invoking Dharma, he should write the document containing the complaint. "If I am free from guilt, let the image of Dharma come up into my hand, and if I am gnilty let the image of sin come in accordance with the law."—thus shall the accused address. "Then the accused shall forthwith take one of the two (images). If he takes the image of Dharma he is considered to be innocent, if of Adharma he is (considered to be) defeated. Thus has been described in short the ordeal by the Dharma and Adharma.

Thus ends the ordeal of Dharma and Adharma.

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[1] पंचगव्य is a special combination prepared by mixing together the fine water *viz.* milk, curds, butter the urine and the dung all pertaining to a cow hence it is called पंचगव्य.

Oaths.

Others also *viz* oaths have been mentioned by **Manu** and others and as being applicable according to the greater or less value of the amount as also having a reference to particular caste e. g. "In (the case where the value of the subject matter is) a *Nishka* there should be an affirmation on oath, in the case of two *Nishkas* touching of the feet, and for less than three an oath by the meritorious deeds, and after that the drinking of the *Kośa* water. "Let the (Judge) cause a Brâhmaṇa to be sworn by his veracity, a Kshatriya by his chariot or the animal he rides on and by his weapons, a Vaisya by his kine, grain, and gold and a S'udra by (the imprecation of) all the heinous sins." Here, moreover, the index of the innocence has been given by **Manu**[1] *viz.*: "He who meets with no speedy misfortune, must be held innocent on (the strength of) his oath." The misfortune also has been stated above in the text[2] "On whom no calamity falls either by the act of God or that of the king." The rule as to the duration of time also should be observed to be to commence from one night and to extend to three nights, commencing from the third night and extending as far as the fifth night, or of one night &c. by determining the importance or pettiness of the case in hand. The penalty also has been mentioned by **Kâtyâyana** when thus the success or defeat of a party has been determined by means of ordeals, *viz.*: "The innocent should be caused to be paid half of a hundred and the guilty becomes liable to puishment." He mentions the penalty: "In the case of the ordeal of poison, water, fire, balance, *kośa* and rice as also in the ordeal of the heated *mâsha* the penalty should be determined respectively as follows:—*viz.* One thousand, six hundred, and five hundred, four, three, two and one hundred respectively the lesser form to be selected in the case of pettier offences. By reason of the text[3]—"When upon a denial, a claim is proved, he should pay (the amount)" &c. in which a penalty has been mentioned, this penalty under the (law of) ordeals comes to be an addition (to it).

Thus ends the chapter on *Ordeals*.

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[1] Ch. VIII.—115.

[2] Yaj. II 113 See p. 165. above.

[3] Yaj. II. 11, see above p. 25 le. 14-151.

NOTE.

The chapter which now follows–*i. e. the Eighth*—deals with the Laws of Partition and Inheritance and topics cognate to these. Mr. Colebrooke selected this portion from the **Mitâksharâ** of **Vijñânes'wara** and presented it along with his other translations of similar portions describing the whole collection as 'Standard Hindu Law Books'. In fact what is known and referred to as Colebrooke's **Mitâksharâ** or **Mitâksharâ** simply in judicial decisions generally is this "Extract from the **Mitâksharâ** composing so much of its work as relates to inheritance."

Having regard to the length of the period for which Colebrooke's translation has been in use and relied upon as an authority, and having regard to its excellence as a translation which has thus acquired a high authority as a work of reference, special care has been taken in the fallowing translation not to disturb the spirit, and generally even the letter, of Colebrooke's translation, unless a departure was found to be necessary, in which case the differences are explained in notes below the line.

Another point to be noted is the division into chapters, sections and paragraphs noticeable in Colebrooke's translation. There is no such division in the original work. It will be remembered that the **Mitâksharâ** is a running commentary written by **S'ri Vijñânes'wara** on the Smriti of **Yâjñawalkya. Vijñânes'wara** takes up the verses of **Yâjñawalkya** and appends his gloss thereto, and the English translation of the first seven chapters of the Second Book of this work published in these "Collections" has closely followed the method adopted by **Vijñânes'wara** so that the translation appearing in this series presents an exact resemblance of the original taxt as it is. The same method is continued in the following chapters. However for facility of comparisons and reference, the divisions made by Colebrooke are indicated by black figures in the body of the translation, and the portion covered in each page is also indicated in brackets at the top.

Note to Abbreviations.

Collections—	Stands for —	"The Collections of Hindu Law Texts" as published in this Series.
Collections Sk.—	"	Collections Sanskrit texts.
Manu—	"	Manu-Smriti as published in the Sacred Books of the East Series. Vol. XXV.
Nârada—	"	Published by Dr. Jolly.
Gautama—	"	A'nandas'rama Series No. 61.
Apastamba—	"	Sacred Books of the East Series.
Baudhayana—	"	Do Do
Vasistha—	"	Do Do and the Bombay Sanskrit Series.
Jaimini—	"	The Sutras of Jaimini, as published in the Anandâs'rama Series No. 24.
Bombay—	"	I. L. R. Bombay Series.
Calcutta—	"	Do Calcutta "
Madras—	"	Do Madras "
Allahabad—	"	Do Allahabad "

Chapter VIII.

On the Distribution of Dâya

*PAGE 73.

(1) Evidence, human and divine, has been severally explained. The distribution of Dâya[1] is now being propounded by the Yogamûrti.[2]

Definition of Dâya.

(2) Here the term *Dâya* signifies that wealth[3] which becomes the property of another, solely by reason of his relation to the owner. **(3)** It is of two sorts. Unobstructible[4] and obstructible. Here the wealth of the father as also of the (paternal) grandfather becomes the property of his sons or grandsons, in right of their being his sons and grandsons respectively and thus (this) is an inheritance not liable to obstruction. But property devolves on (paternal[5]) uncle,

Definition of Unobstructible and obstructible *Dāya.*

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[1] The term दाय "*Dâya*" has been translated by Mr. Colebrooke as "Inheritance" and the expression (दायविभाग) "*Dâya Vibhâga*" as "Partition of heritage." With a view to avoid confusion the original word *Dâya* has been kept as such. It will be seen that this chapter treats of the law of Partition as well as of Inheritance, and in both cases the thing that is partitioned or inherited is termed *Dâya*. Of the various meanings which this word has in Sanskrit, the two which are appropriate and call for special attention here are "a share or portion," and "Inheritance or patrimony." See *Krishna* vs *Sami* 9 Mad 69.

In the next sentence the Author explains the term *Dâya* to be "that wealth which becomes the property of another, solely by reason of relation to owner." And this means that 'wealth' which becomes the property of another, in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is the owner of the wealth, is signified by the term "*Dâya*" [see *Subodhini*.]

Another term which deserves special attention equally with the term *Dâya* is the word (विभाग) *Vibhâga*. It is found to have been translated as "partition," the better translation however would be "Distribution" as this word would cover the cases both of Partition and of Inheritance.

This passage has been referred to in a number of cases. See particularly *Gandhi Maganlal* vs *Bai Jadab* 24 Bom. 192.

[2] *Yoga-murti* the contemplation itself, the image of holiness *i.e.* the sage *Yâjñavalkya*.

[3] Wealth–the original word is धनम्. It includes all kinds of property and is not necessarily confined to money.

[4] Colebrooke translates as "unobstructed." The original is अप्रतिबन्ध (Apratibandha) that which is not liable to obstruction. See notes further on and P. §274 Mr. Mayne's Hindu Law. It is that estate in which the future heir has already an interest by the mere fact of his existence. See observations of Chandavarkar J. in *Bai Parson* vs *Bai Somli*, 36 Bom. 424.

[5] This translation is in accordance with the reading adopted in the text of the "Collections" *viz.* पितृव्यभ्रात्रादीनाम्. The other reading is पितृभ्रात्रादीनाम् which appears to have been before Mr, Colebrooke when he published his translation.

brothers and the rest, (but only) in the absence of the male issue and of the owner, and thus the existence of a son, and the existence of the owner are impediments[1] (to the devolution); and as it is (only) in the absence of these[2] that the property devolves upon those in their capacity as uncle and brother (respectively), this is an inheritance subject to obstruction. The same should be understood in respect of their sons and the rest.

(4) Partition (*Vibhâga*) is the adjustment of diverse rights regarding property held collectively by assigning severally (to individuals) particular portions of the aggregate. **(5)** Entertaining the same opinion it has been said by **Nârada**:[3] " Where a partition of the paternal estate is instituted[4] by the sons, it is called by the learned–Partition of Dâya (heritage)–a title at law ". " Paternal " here is indicative of any relationship which is a cause of property. Also (the expression), " By the sons " indicates relations by propinquity (in general).

(6) (Thus) the following points have to be explained in this chapter, *viz*: at what time, of what, how, and by whom is a partition to be made ? Of these, 'at what time,' 'how,' and 'by whom' will be explained in the course of interpreting (several) verses[5] (bearing on these subjects) respectively. Of what, a partition (may take place), is the only subject (to be) considered here.

(7) Does the right of ownership arise after partition, or does partition take place of property after there was the right of ownership ? Here, the right of ownership is itself being explained. (And the question is) whether the right of ownership is deducible from Śâstra alone, or whether it may be obtained from other (means of) proof ?

An objection.

(8) Here[6] (it may be said that) it is proper to say that it is deducible from Śâstra alone, on account of the text of **Gâutama**.[7] "An (individual becomes) owner by inheritance, purchase, partition, seizure,[8] or finding.[9] Acceptance is for a Brâhmaṇa an additional (mode of acquisition); conquest for a Kshatriya, (and)gain (by labour) for a Vais'ya or Sûdra". If the right of ownership be deducible from other (means of) proof, this text would not have any force.[1] So **Manu**, while discussing the extended[2] application of the term thief, observes:[3] "A Brâhmaṇa seeking to obtain wealth from a man who took[4] what was not given to him, is regarded precisely as a thief, even though he obtain it by sacrificing for such a man or by teaching him". If the right of ownership were (deducible from) merely temporal (sources), the rule which directs the punishment of such as obtain wealth by officiating at religious rites, or by similar means, from one 'who took what was not given to him,' would be irrelevant. Moreover, were (the right of) ownership a (purely) worldly matter, one should not say: "my property has been wrongfully taken by him"; for (according to the above assumption) the ownership would be with the trespasser. Now (if it be said that because) ? the property of another was seized by this man, and (that therefore it) does not become the property of the usurper, (the answer is) then no doubt can arise, whether it appertain to one or the other, just as would be the case in regard to the distinction of gold, silver or the like. Therefore ownership is deducible from (the commands of) the Śâstra alone.[5]

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[1] *Pratibandhas.*

[2] *i.e.* the male issue and the owner.

[3] Ch. XIII-1.

[4] The term in the text is *Kalpyate* (कल्प्यते) "is contemplated or thought of."

[5] Of Yâjñavalkya.

[6] The author sets out the opponent's argument which is called the पूर्वपक्ष (see note on p. 7 Bâlambaṭṭi Eng. Trs.)

[7] Ch. X. 39-42.

[8] *Cf.* Apprehensio, vel occupatio.

[9] Inventio.

The Answer.

(9) To this the answer is, (the right of) ownership is temporal only, for it effects transactions relative to wordly purposes, just as rice or similar substances do. But the consecrated fire and the like deducible from the *S'âstra*[6] do not give effect to actions relative to secular purposes.

An objection again.

The Answer.

[It may again be argued] Indeed even the consecrated fire, &c. has the capacity to boil food &c. [The answey is] not so; for it is not as[7] such that the consecrated fire effects the boiling of food &c. Then as what? [*Answer*] It is as fire (actually) perceptible to the senses (and) as such.

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[1] Lit: it would be meaningless. The original is नेदं वचनं अर्थवत्स्यात्. "This text would have no meaning."

[2] अतिदेश means "an extended application or application by analogy" "इतरधर्मस्य इतरस्मिन् प्रयोगाय आदेशः."

also अन्यत्रैव प्रणीतायाः कृत्स्नाया धर्मसंहतेः। अन्यत्र कार्यतः प्राप्तिरतिदेशः स उच्यते॥
or प्राकृतात्तत्कर्मणो यस्मात्तत्समानेषु कर्मसु। धर्मप्रवेशो येन स्यादतिदेशः स उच्यते॥

[3] Ch. VIII. 340.

[4] लिप्सेत् "If he wishes or desires to take or obtain."

[5] Here ends the objection or पूर्वपक्ष and from the next sentence follows the answer.

[6] The basis of the consecration of fire is *Sâstra* alone.

[7] A fire has two characters, the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as an ordinary fire, as also in its special spiritual capacity.

Question.
Answer.

Here, however, it is not through its visible form, either gold or the like that the purchase of a thing is effected, but by reference to ownership. Indeed,[1] that which is not a person's property in a thing does not give effect to his transfer of it by sale or the like. Besides, the use of property[2] is seen even among the inhabitants of barbarous countries (of the frontier) who are unacquainted with the practice laid down in the Śâstra; since purchase, sale and other transactions are observed among them.

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(10) Moreover, such as are conversant with the science of reasoning, deem ownership[3] acquired by regulated means of acquisition a matter of popular recognition. In the third clause of the *Lipsâ Sûtra* the venerable *Guru* has demonstrated as untenable an objection, which might be raised *viz.* "if restrictions relative to the acquisitions of goods, apply to religious ceremony, there could not be any property, since proprietory right is not temporal", by showing that "the efficacy of acceptance and other modes of acquisition in constituting proprietory right is matter of popular recognition.

The objection.

Indeed, if acquisition of wealth be only for (the performance of) religious ceremony, there would be no right of ownership, and consequently (the celebration of) a sacrifice itself

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1. प्रत्यन्त–lit—The border or frontier region. According to the *Amarakos'a.*— "The country of the Mlechchas", "प्रत्यन्तो म्लेच्छदेशः स्यात्" (अमर. २।१।७).

2. Colebrooke translates thus, " deem regulated means of acquisition a matter of popular recognition. " The original has 'नियतोपायकं स्वत्वम्'.

3. The *Lipsâ*.Sûtra—(See Bâlambhatti Sk p.–125. Subodhini p. 44). This is a disquisition as regards the desire of acquisition (*Lipsâ*) and is introduced in the Second *Sûtra* or *Adhikarana* (See note *Balambhatti* Eng.tr. p. 7. n. 1) "यस्मिन्प्रीतिः पुरुषस्य तस्य लिप्सार्थलक्षणाविभक्तत्वात्", in the first *Pâda* of the fourth *Adhyâya* of the *Sûtras* of Jaimini.

In the first *Sûtra* the distinction between religious and personal purposes is examined (क्रत्वर्थपुरुषार्थयोर्जिज्ञासा). In the second, the inquiry is whether the acts of a man e. g, the milking of a cow &c. are relative to the person or to the act of religion. In the third the question examined is whether restrictions as to the means of acquisition noticed in the *Vedas* in reference to the four classes, must be taken as relative to the person or to the religious ceremony. And the demonstrated conclusion is that property when acquired is capable of being used for any number of purposes, but it can be used only by the person who acquires it; and since, therefore, the person acquiring it is the constant factor and the purposes for which it may be used may vary, the restrictions as to acquisition relate to the person.

Acquisition implies a relation between two objects the owner and his own—like that of a mother and son ; there can, therefore, be no acquisition without the thing to be acquired; and it is a contradiction in terms to say " aquisition does not produce proprietory right" as it is to affirm " my mother is a barren woman. " (See Balambhaṭṭi Sk. p. 126 ll,24-26.)

would not be possible. (To this the answer would be) It is a blunder of any one who affirms that acquisition does not produce a proprietory interest, since this is a contradiction in terms. Accordingly, the Author, premising the acceptance, by popular recognition, of the notion of the right of ownership, even in stating the demonstrated conclusion, proceeds to explain the purpose of the disquisition in this manner: "Therefore a breach of the restriction affects the person, not the religious ceremony"; and the meaning of this passage is thus expounded:[1] "If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and the celebration of the religious ceremony would not be perfect, if performed with wealth obtained by infringing the rules; and consequently, according to the objector, the fault would not affect the man if he deviated from the rule: but according to the demonstrated conclusion, since the restriction, regarding acquisitions affects the person, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule; and it is an offence on the part of a man, because he has violated an obligatory rule." It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

The answer.

(**11**) From what has been said before, it should not be supposed that even what is obtained by robbery and like such means, would be property, for, proprietory right in such instances is not recognised by the world, and it (also) disagress with established practice.

(**12**). Thus, since property, obtained by acceptance or any other (sufficient) means, is established to be temporal the occeptance of alms and similar other modes (prescribed) for a *Brâhmaṇa*, conquest and similar means for a *Kshatriya*, husbandry and the like for a *Vaiśya*, and service and the rest for a *S'ûdra* are propounded as restrictions intended for spiritual purposes; while inheritance and like others are modes stated as common to all, (vide the text[2]): "An (individual becomes) owner by inheritance, purchase, partition, seizure[3] or finding."

(**13**) Here, "inheritance" is (used to indicate) unobstructible heritage. "Purchase" is well known. "Partition" signifies heritage subject to obstruction. "Seizure" or occupation is the appropriation of water, grass, wood and the like, not previously appertaining to any other (person as owner). "Finding" is the discovery of a hidden treasure or the like. If these reasons exist, the person is (recognised as the) owner. If they take[1] place, he becomes proprietor. " In the case of a *Brâhmaṇa*, that which is obtained by acceptance is additional " —(the meaning of this text[2] is) that, in the case of a *Brâhmaṇa* whatever is obtained by means of gift &c. is an additional (mode of acquisition)not common[3] (to all tribes); Similarly as to the text[4]: " In the case of a *Kshatriya*, what is obtained by victory," "additional" is again understood. (The meaning is that) In the case of a *Kshatriya*, whatever is obtained by conquest, amercement, or the like is (an additional mode) not common (to all the tribes). (So in the text)[5] " In the case of a *Vaiśya* and a *S'udra* what is earned (as wages by labour)": Here also "additional" is again understood—(The meaning is that)—what is earned as wages by agriculture, keeping the cattle[6], or the like, is in the case of a *Vaiśya* a (mode of acquisition) not common (to all tribes), and in the case of a *S'ûdra*, that which is earned in the form of wages by service of the regenerate, and by similar means, is (a mode of acquisition) not common (to all tribes). Thus likewise, among the various causes of property which are peculiar to mankind, whatever has been stated, as peculiar in the case of certain mixed classes in the direct or[7] inverse order of the tribes, *e. g.* driving of horses in the case of the *Sûtas*, and like other modes, is indicated by the word " earned "; for all such acquisitions assume the form of wages or hire: for according to the (lexcion) **Trikândee**[8] " the word *nirveśa* is used to indicate, wages or occupation". All this should be understood as wealth acquired by modes not common (to all tribes).

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[1] By the venerable *Guru* i. e. Prabhâkara.

[2] Of Gautama Ch. X. 39 (See p. 42 *cf.* avove.)

[3] Acquisition by occupation *cf. Occupatio.*

(14) As for the precept respecting the succession of the widow and the daughters &c, the declaration (of the order of succession), even in that text, is intended to prevent mistake, although the proprietory right be a matter familiar to the world, where many persons might (but for this precept) be supposed entitled to share the heritage by reason of their affinity to the (deceased) owner. The whole is therefore unexceptionable.

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[1] कृतेषु is the reading adopted here. There is another reading *viz* : ज्ञातेषु Tr : " if they are known &c ". 2–4–5.

[2] 4 and 5 *i. e.* of Gautama cited above.

[3] असाधारण *i.e.* peculiar or special mode of acquisition specially mentioned.

[6] कृषिगोरक्षा.

[7] See Achârdhyâya Ch. IV. अनुलोमज—*i.e.* the issue of a mixed marriage when the father is of a class higher than that of the mother. Verses 91 and 92.

प्रतिलोमज—is the issue of a mixed marriage where the mother is of a higher class and the father of a lower one. Ver. 93–94.

[8] Amara. III. 3–214.

An objection.

The answer.

(**15**) As for the remark, that if property were temporal, it could not be said "my property has been taken away by him", that is not accurate ; for a doubt respecting the proprietory right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

(**16**) The purpose of the preceding disquisition is this. A text[1] says: "When *Brâhmaṇas* acquire wealth by a blameable act, they are purged of the guilt by the abandonment of such wealth, by prayer and by rigid austerity." Now, if property be deducible only from *S'âstra*, that which has been obtained by blameable means *e. g.* by accepting presents from an improper person, or by barter or similar other means would not be property at all, and consequently would not be property partible among sons. But if the proprietary interest be a worldly matter then even what is obtained by accepting presents from an improper person &c. is property, and may be divided among heirs ; and the atonement above referred to in the text "they are purged of the guilt by its abandonment &c." regards the acquirer only ; but of the sons, however, their proprietary interest arises by their right of inheritance and therefore no blame attaches to them since **Manu**[2] says: "There are seven lawful modes of acquiring property, (*viz.*) inheritance, finding or friendly donation, purchase, conquest, lending at interest, the performance of work, and the acceptance of gifts from virtuous men."

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(**17**) Next, it is doubted whether the right of property arises from partition or the division of a proprietary interest which already was existing? (**18**) Of these (positions), that of property arising from partition is right ; since a man to whom a son is born, is enjoined to maintain a holy fire : for, if property were vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth. (**19**) Likewise, the prohibition of a division of that, which is obtained from the liberality[3] of the father, previous to separation, would not be pertinent, since no partition of it can be supposed, for it has been given by consent of all parties. As says **Nârada**[4]

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[1] Manu Ch. XI. 194.

[2] Ch. X. 115. See *Ponnappa*, vs. *Pappuvayyangar*. 4 Mad. at page 24.—where the court enters into an elaborate discussion of this and other passages of the Mitâksharâ, for determining the relative positions of a father and a son under the Mitâksharâ.

[3] प्रसाद् *i. e.* favour, pleasure.

[4] Chapter: XIII-6.

An objection.

"The two kinds of property, *viz.*, gains of valour and the wealth of a wife, and also that which is acquired by science—are three kinds of property not subject to partition, and so is a favour conferred by the father (exempt from partition)." (**20**) So the text[1] concerning an affectionate gift viz. "what has been given by a husband, when pleased,[2] to his wife, she may consume as she pleases, even when he is dead, or may give it away excepting immovable property," would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immovable property" with the terms "what has been given" (in this text); for that would be a forced construction by connection of disjointed terms. (**21**) As for the text "The father is master of the gems, pearls, and corals and of all (other movable property); but neither the father nor (even) the grand-father is so of the whole[3] immovable estate" and also (the text[4]) "By favour of the father, clothes and ornaments are used, but immovable property may not be consumed, even with the father's indulgence"—which passages forbid a gift of immovable property through favour: they both relate to immovables which have descended from the paternal grand-father. And although after the grand-father is dead his effects become the common property of the father and sons, it appears even from this text, that the gems, pearls, and other movables, belong exclusively to the father, while the immovable estate remains common. (**22**) Therefore property is not by birth, but by demise of the owner or by partition. Accordingly, since the demise of the owner is a cause of property, there is no room for supposing that a stranger could not be prevented from taking the effects because the property was vacant[5] after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease, and does not require partition.

The Answer.

(**23**) To this the answer is: It has been shown that property is a matter of popular recognition, and the right of sons and the rest, by birth, is most familar to the world, and so it cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned. For the text of **Gautama** expresses, "Let ownership of wealth be taken by birth, as the venerable teachers direct." (**24**) Moreover the text above cited[1] viz. "(the father is the master) of gems, pearls, corals &c." is pertinent to the supposition of a proprietary right vested by birth. Nor is it right to affirm that it relates to immovables which have descended from the paternal grand-father: since the text expresses "neither the father, nor even the grandfather." This rule[2], that the grandfather's own acquisition should not be given away while a son or a grandson is living, indicates a proprietary interest by birth. According to the other opinion, the precious stones, pearls, clothes, ornaments, and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion also, the father has power, under the same text, to give away such effects, though acquired by his father. Thus there is no[3] difference.

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[1] Of Vishnu.

[2] *Cf.* Mayukha. IV. 10-9.

See—Damodar vs *Parmanandas* 7 Bom. 165. *Jagmohundas* vs *Mangaldas* 10 Bom. 546. *Surajmuni* vs *Ratrinath*. 25 All: 353.

[3] सर्वस्य—The meaning of the text is that, not the father, nor the grandfather is master of *any* of the immovable property &c.

[4] The author of this text is not known.

See *Shri Sitaram Pandit* vs *Shri Harihar Pandit* 35 Bom. 169 at p. 181.

[5] द्रव्यस्वत्वस्य प्रहीणत्वात् There being no proprietary right over the property &c., on account of the non-existence of the owner &c. (See Bâlambhatti Sk. p. 131.)

(**25**) As for the text of **Vishṇu**[4] *viz.* "(That which has been given) by the husband when pleased &c.", which mentions a gift through affection, that must be interpreted as relating to property acquired by the father himself and given with the consent of his sons and the rest: for, by the text[5] above cited *viz.* "(the father is the master of) gems, pearls &c." the fitness of things, only those other than immovables, for an affectionate gift was determined with certainty. (**26**) As for the alleged disqualification[6] for religious duties which are prescribed by the *Veda* and which require for their accomplishment the use of wealth, sufficient for such purposes is inferred from the cogency of the text itself which enjoins their performance and which is in the nature of a command.

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[1] *viz.* of *Nârada* p. 178 ll. 1–4.

[2] *viz:* That which is stated in the text of Nârada cited above.

[3] *i. e.* Difference of opinion.

[4] Cited above at p. 178 ll. 5–7.

[5] *i. e.* of Nârada & *Vishnu.*

[6] Both Bâlambhatti & Subodhini explain this by saying that the power to perform these is given by special texts which enjoin their performance.

(**27**) Therefore[1] (it is settled that) ownership in the father's or grand-father's[2] estate is by birth. Still, it (also) stands (as good law) that the father has independent power in the disposal of effects others than immovables for indispensable acts of duty, and for purposes prescribed by the texts of law, as gifts through affection, support of the family, relief from distress and so forth: but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor *vide* the text[3] "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support; no gift or sale should, therfore, be made."

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An exception stated.

(**28**) An exception to it follows:[4] "Even a single individual may conclude a donation, mortgage, or sale, of immovable property, during a season of distress, for the sake of family, and especially for pious purposes." (**29**) The meaning of that text is this: while the sons and grandsons are minors and incapable of giving their consent[5] or doing similar

Explained.

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[1] This text regarding the birth-right in the ancestral property and the father's power of disposal over them has been noticed in various cases. The following may be noted as some of these.

Rao Balvant Singh vs *Rani Kishori* 25 I.A.541 67at p.68 s.c. 20 All.267at p.284.

Gandhi Maganlal vs *Bai Jadhab* 24 Bom. 214 s. c. I. Bom. L.R. at p. 595. *Bachoo* vs *Khushaldas* 29 Bom. 61; 6 Bom. L. R. 875.

Bhau vs *Raghunath* 30 Bom. 239.

Ponnapa Pillai vs *Pappuvâyyangar* 4 Mad. at pp 8, 16, 42 &c.

Gangula vs *Ancha Bapulu* 4 Mad. at p. 89.

Sivasankura Mudali vs *Parvati Anni* 4 Mad. at p. 103.

Nârasimha vs *Venkatadri* 8 Mad. 293.

Nana Tawkar vs *Ramachandra Tawker* 32 Mad. at p. 381.

(This case disscusses the several portions of the Mitâksharâ bearing on the father's right over ancestral property generally.)

Kali Parshad vs *Ram Charan* 1 All. 160; *Sital* vs *Madho* 1 All. 396.

Jasoda Koer vs *Sheo Pershad* 17 Cal. at p. 36.

Chandradeo Singh vs *Mata Persad* 31 All. 176, 180, 184, 187, 211.

Nand Ram vs *Mangal sen* 31 All. 359.

Mohanund vs *Nafur Mondul* 26 Cal. 824.

[2] Colebrooke translates as 'ancestral'. The word in the original text is पैतामहे *Paitâmahê i. e.* belonging to the grandfather. Mr. Colebrooke's translation has been commented on in *Jamna Prasad* vs *Ram Partab* 29 All. at p. 669 referring to the remarks of Babu J. C. Ghose in his Hindu Law page. 375 (2nd Ed.)

[3] " Of *Vyâsa* as cited in other compilations "—Colebrooke

[4] *Brihaspati* as cited in the Ratnâkara &c.—Colebrooke

[5] and thus render the expenditure a valid binding charge upon their shares.

acts, or while the brothers are so and continue unseparated, even one person, who is capable, may conclude a gift, hypothecation, or sale, of immovable property, if a calamity affecting the whole property require it, or for supporting the family, or for performing indispensable[1] duties, such as the obsequies of the ancestors.[2] (**30**) As for the text[3]—"Kinsmen, whether unseparated or separated, are equal in respect of (rights in) immovables; for one (alone) has not power over the whole, to make a gift, sale or mortgage"—it must be interpreted thus: among unseparated kinsmen, the consent of all is indispensably requisite, because, since the estate is held in common, no one is fully empowered to make an alienation; but among separated kinsmen, the consent of all tends to the facility of the transaction, by obviating any future doubt, as to their separation or union; it is not required on account of any want of sufficient power in the single owner, and hence the transaction is valid even without the consent of separated kinsmen. (**31**) Again as for the text,[4]—"Land passes by six (formalities), by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and water."—consent of townsmen is required for the publicity of the transaction, since it is provided[5] that "acceptance of a gift especially of the immovable property, should be public", but not that the contract remains incomplete without the consent of the townsmen:

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[1] "Indispensable duties". The expression in Sanskrit आवश्यं कर्तव्येषु पितृश्राद्धादिषु —(*Avas'yam Kartvyeshu pitṛi-s'râddhâdishu*) Tr. "For acts which must be performed such as obsequies of the deceased ancestors and the like" (see 34 Mad. at p. 434)

This expression has been subjected to judicial criticism—see *Govindarazulu* vs *Devarabhotla* 27 Mad. at p. 209. As regards the term *Âdi*–the like–at the end of the above expression, Muttuswami Ayyar J observes as follows in *Ponnappa* vs *Pappuvayyangar* 4 Mad. at p. 17. "The phrase *Âdi* both according to Hindu law and the rule of construction, refers to annual *Srâddhas*, the ceremony of upanaya in the case of minors in the three higher classes, and of marriage in the case of girls &c—and in short to such ceremonies as, if unperformed, would entail a forfeiture of caste or status etc."—and it was held in 27 Mad. 209 that that expression could not be extended to the marriage of males. This interpretation was dissented from later on in *Kameswara Sastri* vs *Veeracharlu* 34 Mad. at p. 434 where it is observed, "the word Âdi —means "beginning with" and merely indicates that the father's ceremony which is named is one out of a group of ceremonies." The expression simply means "acts, such as the Shrâdda and the like others which have necessarily to be done". See also 32 Bom. 81.

[2] Colebrooke translates–"obsequies of the father"–but the word *pitṛi* when used in connection with *Śrâddha* indicates other ancestors also who are dead and whose *Srâddha* is to be performed.

[3] Of Bṛihaspati XXV—13 see *Ponnappa* vs *Pappuvâyyângar* 4 Mad. 1 at pages 9, 10, 54 where this text has been referred to and discussed.

[4] The author of this passage is not known.

[5] Yâjñavalkya II. 176. See 11 I. A. 218 at p. 230.

the consent of neighbours serves to obviate any dispute concerning the boundary; the use of the consent of kinsmen and of heirs has already been explained. (**32**) "*By gift of gold and water*"—since the sale of immovable property is forbidden by the text "In regard to the immovable estate, sale is not allowed (but) a hypothecation may be made with the consent (of persons interested)," and since also donation is praised in the text: "Both he who accepts land as a gift as also he who gives it, are performers of a holy deed and shall surely go to heaven." even when a sale is to be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation). This is the meaning.

(**33**) Although the right of property is by birth alone in the estate of the father or the grandfather, we shall mention (later on) a special rule in the text (II. 121) "land which was acquired by the grandfather &c."

[**Colebrooke Sect. II.**]

(**1**). Now[1] with a view to expound, at what time, by whom, and how, partition may be made, the Author says:—

Yâjñavalkya Verse 114.

If the father makes a partition, let him separate his sons at his pleasure, and either separate the eldest with the best share or (if he choose) all may be (made) equal sharers.

Mitâksharâ:—(**2**) If (ever) a father wishes to *make a partition*, then *he may at his pleasure separate* (**Ichchayâ Vibhajet**) his sons from himself; whether one, two, or more sons.

Special rule for the share of the eldest.

(**3**) No rule being suggested, and the will being unrestrained, the Author adds, by way of restriction—*and either (separate) the eldest with the best share* (**Jyestham wâ s'restha bhâgena**). From this it is understood[2] that he may separate the eldest with the best share, the middle-most with a middle share, and the youngest with the smallest[3] share. (**4**) This distribution of best and other portions is propounded by **Manu**,[4] "The additional share (deducted) for the eldest shall be one-twentieth (of the heritage) and which is the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."

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[1] तद्दर्शयन्—Tr.-while pointing out (as to at what time &c—the author says &c.) This portion has been referred to in *Kali Parshad* vs *Ramcharan* 1 All. 160.

[2] *i.e.* it follows अनुवर्तते.

[3] *i.e* as given in the text of *Manu* immediately following.

[4] Ch. IX. 112.

(**5**) The term *either* (**wâ**) is relative to the subsequent alternative *viz. Or all may be equal sharers* (**sarve wâ syuḥ samâns'inaḥ**) *i. e.* All, namely, the eldest and the rest, should be made partakers of equal portions.

(**6**) This unequal distribution, moreover, is allowed in reference to property acquired by himself. But, if the wealth descended to him from a line of[1] ancestors, an unequal partition at his pleasure is not proper, as equality of ownership (over such property) will[2] be declared (further on).

Periods for Partition.

(**7**) Under the text[3] "If the father makes a partition &c", when the father desires separation, that is one period for partition. Another period, also, is when, even when the father is living, but is indifferent to wealth and disinclined to pleasure, and when the mother is incapable[4] of bearing issue—at such a time a partition is admissible merely at the option of the sons[5], even against the wish of the father, as is shown by **Nârada**, who, premising partition subsequent to the demise of both parents by the text[6]: "Therefore, let the sons divide the wealth equally, when the father is dead", adds[7] "Or when the menstruation of the mother has ceased, and the sisters are married, or when the father's sexual desire is extinguished and he has become indifferent to worldly interests." Here the words "Let the sons divide the wealth equally" are understood. **Gautama**[8] likewise, having said "After the demise of the father, let the sons divide his estate," states a second period. "Or when the mother is past child-bearing," and a third, "while the father lives, if he desire separation." So, even while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or

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[1] Colebrooke translates "from his father" but the expression is पितृक्रमायाते (pitṛikramâyâté) Tr. "descended from an unbroken line of male ancestors".

[2] Yâjñawalkya II. 121.

[3] Yâjñawalkya II. 114.

[4] Lit. it means—and when the mother has ceased to menstruate.

[5] The Sanskrit expression is पुत्रेच्छयैव at the option of the sons. The word पुत्र is used in a collective as also in a distributive sense. It may therefore be at the option of one son or of more.

[6] Ch. XIII—2

[7] Ch. XIII—3.

[8] Ch. XXVIII—12

afflicted with a lasting disease. As says **S'ankha** " Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased."

(**8**) Two[1] sorts of partition at the pleasure of the father have been stated, *viz.*, equal and unequal. In this connection the Author adds a particular rule in the case of equal partition.

Yâjñavalkya Verse 115.

If he make the allotments equal, his wives (such of them) to whom no Stridhana[2] had been given by the husband or the father-in-law, must be made partakers of equal portions.

Mitâksharâ :— (**9**) When, by his own choice, the father makes all his sons partakers of equal portions, then, the wives also should be made participants of shares equal to those of sons. *Such* (**Yâsâm**) of the wives, *to whom no strîdhana had been given by the husband or the father-in-law*. (**Bhartrâ swas'ureṇa wâ strîdhanam na dattam**). But, if separate property had been given to a woman, the Author directs further on[3] (Verse. 148) half a share to be allotted to her (in the text) "or if any had been given, let him assign a half. " (**10**) If, however, he make the allotments by allotting the best share, &c., to the eldest &c., then the wives do not get the best or such other portions, but receive equal shares of the aggregate from which the special shares have been subtracted, as also their special share as laid down by **Âpastamba**[1] "And the furniture in the house. "The ornaments are the wife's (property)."

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[1] The translation of Mr. Colebrooke is retained here—but the expression in Sanskrit *viz.* अधर्मवर्तिनि "when his conduct is not in conformity with(the rules of)*Dharma*" —has a wider meaning and force. Being addicted to vice is only one phase of "the conduct not being in conformity with *Dharma*", and the son would thus have a wider range of circumstances under which he can ask for a partition.

Moreover in explaining the text of *S'ankha* in the next line Bâlambhaṭṭa gives अधर्मवर्तिनि as an equivalent of विपरीतचेतसि—which Colebrooke has translated as "disturbed in intellect. " According to him the two expressions bear an identical meaning and would mean—" When the father has become irreligious. "

[2] Colebrooke translates the word *Stridhana* as *separate property*—Having regard to the technical character of this expression and having regard to the fact that the word is more properly understood as *Stridhana* than by any of its English equivalents, the original word has been retained in the translation. See also further on.

[3] See 4 Mad. 22 and 34 All. 508 (Sheo Naran vs Janki Prassad.)

(**11**) To the two alternatives before stated, *viz.*, "and either separate the eldest with the best share or (if he choose) all may be (made) equal sharers" (II. 114. p. 182 ll. 26–27 above), the Author propounds an exception.

Yâjñavalkya Verse 116 (1).

Of one who is able and who is not desirous of having any share, the separation may be effected by giving (him) a trifle.

Mitâksharâ:—(**12**) To one who is himself competent to earn wealth and *who is not desirous of having any share* (**Anîhamânasya**) from his father's wealth, *i. e.*, who does not wish to have any share, anything whatsoever, *i. e.*, a trifle, an article of no value may be given and *separation effected* (**Prithak Kriyâ**), *i. e.*, the division may be (thus) completed by the father, so that the children, or other heirs, of that son, may have no future claim of inheritance.

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[1] II 14-8-9.

Mr. Colebrooke translates "The furniture in the house and her ornaments are the wife's (property)—" this is in accordance with the published 'extracts' of the text of Âpastamba. A reference to the text of Âpastamba itself however points to a different state of things. This text occurs in the 14th *Khanda* of the 2nd Book of Âpastamba's Dharmasûtra. This *Khanda* treats of the *Dâyavibhâga* or "Distribution of hertiage". From § 1 to 5 the general line of heirs is mentioned, § 5 mentioning the king as taking by escheat. Then from § 6 begin special rules of inheritance, and § 7 and § 8 give the special right of the eldest son to certain items of property, § 9 mentions the wife's claim to special property and § 10 modifies it to some extent. The text quoted in the Mitâksharâ is part of § 8 and § 9. Paras 7, 8, 9 and 10 run thus.

Tr. "In some countries, gold, black cattle, black produce of the earth is the share of the eldest (7). The chariot, and the furniture in the house according to some § (8). The share of the wife consists of her ornaments, and the wealth of the *jnâti*. That however, is opposed to *S'âstra* (9)."

It will thus he seen that "the furniture in the house" in the passage, from Âpastamba forms part of § 8 which (together with § 7) exclusively mentions properties which go to the eldest son, while it is part § 9 alone a reference to the ornaments of the wife is made. The translation given above and the punctuation are in accordance with this reading of the text.

(**13**) By the text "or the eldest with the greatest share" the distribution of greater and less shares has been shown. To forbid, in such a case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions (of the special shares) such as are dictated by *S'astra*, the Author adds:—

Yâjñavalkya Verse 116 (2).

A partition made by the father among sons separated with greater or less shares, if (it be) according to *Dharma*, is pronounced valid.

Mitâksharâ:—(**14**) Of the sons *separated* (**Vibhaktânâm**) with a *greater or less* (**nyûnâdhika**) share, if such an unequal partiton *be made according to Dharma* (**Dharmyaḥ**) *i. e.* as dictated by *S'âstra*, then that division *made by the father* (**Pitṛikṛitaḥ**), is completely made, and cannot be afterwards set aside; this *is pronounced* (**Smṛitaḥ**) by **Manu** and the rest. If, however (it be) otherwise, it may be set aside even though made by the father. As says **Nârada**:[1] "A father, who is afflicted with disease, or "influenced by wrath, or whose mind is engrossed by sensual passion, or who "acts contrary to what the *S'âstra* dictates, has no power in the distribution "of the estate."

[**Colebrooke Sect. III.**]

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[Partition after the father's ~~disease~~.]

(**1**) The Author next propounds another period of partition, other persons as making it, and a rule respecting the mode.

Yâjñavalkya Verse 117. (1)

The sons should divide equally both the assets and the debts of the parents after them.

Mitâksharâ:—(**2**) *After*[2] (**Ûrdhwam**) *i. e.* after the death of the *parents* (**Pitroḥ**) *i. e.* of the mother and the father. Thus the period for partition is shown. By (the expression the) *sons* (**sutâḥ**), the persons who make the distribution are indicated. By (the expression) *equally* (**samam**), the rule as to the mode (of partition) is indicated, *i. e.*, in equal shares only, should they divide the assets and the debts.

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[1] Ch. XIII—16.

[2] See *Jairam* vs *Nathu* 31 Bom. 54=8 Bom. L. R. 634.

An Objection.

(**3**) But **Manu**, having premised[1] " after the death of the father and of the mother" and having declared,[2] " The eldest alone may take the whole paternal estate; the others should live under him just as (they lived) under their father " has said :[3] "The additional share (deducted) for the eldest is the " twentieth part (of the heritage), as also that which is the best of all " chattels ; for the middlemost, half of that, but one-fourth for the youngest." The twentieth portion of the entire property, as also that which is the best of all the chattels, must be given (by way of deduction) to the eldest ; half of that a fortieth part and a middling chattel, should be allotted to the middlemost and a quarter of it—the eightieth part and an article[4] of low quality, should be given to the youngest, and thus **Manu** has exhibited a distribution with deductions among brethren separating after the death of the mother and the father.

Moreover,[5] by the text[6] "But if there be no deduction, the allotment of "shares shall be in this manner: Let the eldest son take one share in excess, " and the next born one share and a half, and the younger ones one share " each; thus is the law settled," he has directed an unequal partition even when without deductions, among brethren separating after the demise of the parents, by allotting to the eldest two shares, to the (brother) next born a share and a half, and to those born next after, one share each.

And the Author (*i. e.* Yâjñavalkya) has exhibited an unequal distribution when a division is made during the father's life-time (by the text): "Or the eldest with the best share" &c (II. 114 p. 182 l. 21 above).

A Question.

Hence an unequal partition is admissible at all times. How then is a restriction introduced requiring that "sons should divide only in equal shares"?

The Answer.

(**4**) The question is thus answered. True, this unequal partition is found in the *S'âstra*, still however, it must not be practised, as it is abhorred by the world, since that is forbidden by the text[7]: "One must not practise that which procures not "the celestial bliss and is abhorred by the people, even though it be allowed by law." As for example, notwithstanding the direction in the text[8].

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[1] Ch. IX—104
[2] Ch. IX—105
[3] Ch. IX—112.
[4] Colebrooke Tr. " worst chattel. "
[5] From here begins the last part of the objection against an "equal portion."
[6] Ch. IX. 116-117
[7] *Yâjñavalkya* I. 156
[8] *Yâjnavalkya* I. 109.

"Let him offer a big bull or a big goat to a venerable priest" that is not practised as it is abhorred by the people. Also as, notwithstanding the direction as to the slaughter of a cow in the text: "Slay a barren cow as a victim consecrated to Mitra and Varuṇa" that is not practised as it is abhorred by the people. (5) It has also been said[1]. "As the law relating to "appointment and also the rule regarding the slaughtering of a cow as a "victim is not now in use, so also is the partition with deductions not current now."

(6) **Âpastamba,** also, having delivered his opinion (in the text[2]). "He (*i. e.*, the father) should, during his lifetime, divide his wealth equally amongst his sons", and by the text[3]: "Some hold that the eldest is the heir" having premised, as the opinion of some, the succession of the eldest to the entire estate, and having exhibited as the opinion of others the distribution by (the method of) deductions having regard to (the usage of) particular places *viz*:[4] "(In particular countries), gold, black kine, "and the black produce of the earth, belong to the eldest. The chariot "and the furniture in the house are the father's, and according to some, "ornaments, as also property (received by her) from kinsmen belong to the wife", has refuted it as being forbidden by *S'âstra*; and has himself pointed out the prohibition in the *S'âstra* thus:[5] "It is recorded in Scripture, "without distinction, that *Manu* distributed his heritage among his sons."[6]

(7) Therefore, unequal partition, though noticed in the *S'âstra*, should not be practised since it is disapproved by the world and is contrary to Scripture. And for this reason the restrictive rule is laid down, *viz.*, "(the brethren) should divide only in equal shares."

(8) It has been declared that sons may part the effects after the death of the mother and father. There the Author states an exception in regard to the mother's separate property.

Yájñavalkya Verse 117 (3rd quarter).

Of the mother's (property) the daughters (shall take) the residue (after the payment) of debts.

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[1] In a text of *Bhaṭṭa*—(see Balambhaṭṭi p. 139) The meaning is that there are two *Vidhis* one ordained by the *Veda* and the other ordained elsewhere than *Veda*. See *Balambhaṭṭi* and *Subodhini*.

[2] II. 6-14-1

[3] *Âpastamba* II. 6. 14. 8

[4] *Âpastamba* II. 6. 14. 9

[5] *Âpastamba* II. 6. 14. 11

[6] This is a passage from the *Taittiriya Veda*.—Bâlambhaṭṭa.

Mitâksharâ :—(9) The *Mother's* (**Mâtur**) property, *the daughters* (**Duhitâro**) shall divide. *The residue of debts* (**Riṇâchchesham**), *i. e.*, the residue (remaining) after the discharge of the debts contracted by the mother. Hence, the purpose (of the preceding part) of this text is, that when the mother's assets are equal to or less than her debts, the sons may (take and) divide them. (10) The[1] * PAGE 79. meaning is this : A debt incurred by the mother, must be discharged by the sons only, and not by the daughters; but the daughters shall take the residue of her assets after the payment off of her debts. And this is proper. For by the rule[2] "A male "child is procreated if the male seed predominate, a female child by "the prevalence of the female," the *Strîdhana* property goes to the daughters, because portions of the (body of the) female (parent) abound in the female children ; and the father's estate goes to the sons, as portions of (the body of) the father abound in the male children.

(11) Even[3] there, a special rule has been propounded by **Gautama**[4] "The *stridhana* property goes to her daughters unmarried, and (failing "them) to the unprovided." The meaning of this is this : If there be a competition of married and unmarried daughters, to the unmarried alone goes the *stridhana*; and, if among the married daughters there be a competition between the endowed and the unendowed daughters, it belongs exclusively to such as are unendowed. 'Unendowed' means destitute of wealth.

(12) In answer to the question, "in the absence of daughters, who should take the residue of the mother's estate that may remain after payment of her debts"? the Author adds.

Yâjñavalkya Verse 117 (last quarter.)

In their default, the issue (succeed).

Mitâksharâ:—(13) In *their* (**Tâbhya**) absence *i. e.* of the daughters *i. e.* in *default of* (**rite**) daughters, *the issue* (**Anwayaḥ**) *i. e.* the sons &c. should take. This moreover was already demonstrated by the text:[5] "The sons should divide equally...after the parents &c," but is here expressly declared for the sake of greater perspicuity.

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[1] See *Vithalrao* vs *Ramrao* 24 Bom. 17=2 Bom. L. R. 154/156

[2] Manu Ch. III. 42

[3] See *Balambhaṭṭi* p. 142

[4] Ch. XXVIII—22

[5] Cf. *Yâjñavalkya* II. 117. p. 176 ll. 23-24 (above).

[Colebrooke Sect. IV.]

[Effects not liable to partition.]

(1) The Author mentions things not liable to partition.

Yâjñavalkya Verses 118, 119.

Whatever else is acquired by a man himself without detriment to the paternal estate, as a present from a friend, as also a nuptial present, shall not belong to the co-heirs (118).

Nor shall he, who recovers hereditary property, which had been taken away, give it up to (his) co-parceners, nor also what was gained by learning (119).

Mitâksharâ:—**(2)** Without detriment to the estate of the father or the mother, *that which is acquired by a man himself* (**Yat swayamarjitam̱**), *a present from a friend* (**Maitram**) *i. e.* obtained from a friend, *a nuptial present* (**Audwâhikam**), *i. e.*, obtained at the marriage, *that shall not belong* (**tat na bhavet**) to the *co-parceners* (**dâyâdânâm**) *i.e.* the brothers. Any property whatever which had descended in succession (**kramât**) from paternal ancestors, and *had been taken away* (**ḥritam̱**) by others, and through inability or any other cause, had remained unrecovered by the father and the rest, he among the sons, who recovers it with the consent of the rest, *shall not give up* to (his) *co-parceners* (**Tad dâyâdebhyo na dadyât**) *i. e.* to the brothers and the rest; the recoveror alone shall take it. **(3)** Here, if it be land, the recoveror takes the fourth part, but the remainder, however, belongs to all equally: as says *S'ankha* "If one alone recovers land (inherited) in regular succession and which had been formerly "lost, having first given him a fourth part, the rest[1] may divide the remainder according to their proper shares." **(4)** In the expression, "In regular succession" the word "inherited" is understood. **(5)** Likewise, *what was gained* (**Yallabdham**) by learning (**vidyayâ**) *i.e.* by the study of the *Vedas* or by teaching or by expounding the meaning of the *Vedas*; that also he need not give up to his co-parceners, but the acquirer himself should alone take.

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[1] Including the acquirer himself—Bâlambhaṭṭi.

The rule here stated "was intended to apply strictly to hereditary property of which the members of the family had been violently or wrongfully dispossessed or adversely kept out of possession for a length of time :—"Property unjustly detained which could not be recovered before" is the import of **Manu IX 209**," *Visalatchy* vs. *Ammasami*, 5 Mad. H. C. R. 150 at 157. See also West and Bühler on Hidu Law p. 71 (3rd Edn.) Accordingly it was held, in *Bajaba* vs *Trimbak* 34 Bom. 106, where certain family property was allotted to a member of one branch of the family in virtue of a compromise and the same was purchased by a member of another branch with his own money not forming part of the joint family property, that the rule stated in the text here did not apply to such a case.

(**6**) Here, moreover, the expression "whatever else is acquired by a man himself without detriment to the paternal estate " must be everywhere[1] understood. And hence it is to be connected with each member of the sentence thus: What was obtained from a friend without detriment to the paternal estate, what was obtained as a nuptial present without affecting the paternal estate, what was recovered of the hereditary property without expenditure of ancestral property, what is gained, by learning without use of the paternal wealth. And hence, what is obtained from a friend as the return of an obligation conferred at the charge of the patrimony ; what is received as a nuptial present at a marriage concluded in the *Âsura*[2] form or the like ; and what is recovered of the hereditary estate by the expenditure of paternal wealth and what is gained by learning acquired at the expense of ancestral wealth ; all that must be shared in by all the brethren and also by the father. (**7**) Moreover,[3] from the very fact that the clause " without detriment to the paternal estate" is in every place understood, even what is obtained as a gift,[4] without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, it, (*i. e.*, the text) need not have commenced by specifying "gifts from friends," " nuptial presents " and other similar acquisitions.

* PAGE 80.

An Objection.

(**8**) It may be urged that the enumeration of friendly gifts and similar acquisitions is pertinent, as showing that gains are exempt from partition, even though obtain-

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[1] सर्वशेष—*i. e.*, must be taken by implication to be predicated of each kind of individual acquisition enumerated immediately further on.

[2] At the Âsura form of marriage, receipt of money by the father or his kinsmen from the bridegroom is the principal feature.

[3] The reading here adopted is in accord with that of the *Sûbodhini* (see Collections, Vol. II, p. 50 ll. 7-10). The commentator says that as these acquisitions (*viz.*, friendly gifts &c.) made at the charge of the patrimony are liable to be shared, so anything obtained as a mere gift, pure and simple, and not being included among these acquisitions must be subject to partition though procured without use of the paternal goods.

The Author of the *Bâlambhaṭṭi* gives another reading, *viz.*, न तथा (**na tathâ**—) " not thus ", and according to this reading donations pure and simple will be excluded from the common partible property. Even there, the author notices the reading given and adopted in the text here. (See Bâlambhaṭṭi Sk. p. 144 ll. 19-20.)

"क्वचिन्नरहितः पाठः "

[4] प्रतिग्रह (Prati-graha)—is a gift pure and simple.

The Answer.

ed at the expense of the patrimony. To this the reply is: Were it so, it would be inconsistent with well-established usage,[1] and also would contradict the text of **Nârada**[2] in regard to gains of science, *viz.* "He, who maintains the family "of a brother while he was acquiring learning,[3] shall take a share in the "gains of learning, be he ever so ignorant (himself)." Moreover, the definition of wealth, not participatable, as being acquired by learning is propounded by **Kâtyayana**[4] thus: "that wealth which is gained by means of learning "acquired from another with the help of maintenance received from "strangers, is termed acquisition through learing." (**9**) Moreover, if the expression " without detriment to the paternal estate " be taken as a separate clause, anything obtained by gift would be exempt from partition contrary to established usage. (**10**) This very thing has been made clear by **Manu**[5] : "What one acquires by his labour without using the patrimony, "he need not give up to the co-heirs ; nor what he has gained by science." (**11**) *By labour*—by service, war or the like.

An objection.

(**12**) Indeed it is unnecessary to declare, that effects obtained as presents from friends, and similar acquisitions made without using the patrimony, are exempt from partition, since there was no rule directing a partition (of these). It is a well-known rule that what is acquired by one belongs to him only and to no other person. While a prohibition (necessarily) implies a possible supposition of the contrary. **(13)** Here a certain writer suggests the existence of a previous supposition thus: By interpreting the text[1], "Whatever "property the eldest acquires after the father's death, a share of that belongs "to the younger brothers, provided they have duly preserved learning," to mean—that 'if the eldest, youngest, or middlemost (acquire property) whether after the death of the father or when he is not dead, (a share shall accrue) to the rest whether younger or elder,' grounds do exist for inferring a supposition that gifts from friends and the like are liable to partition, whether the father be alive or dead, and so this[2] is prohibited.

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[1] समाचार—शिष्टाचार " the received practice of unerring persons " Colebrooke.

[2] Ch. XIII. 10.

[3] विद्यामधिगच्छतः—अधिगम् is to acquire—a free translation would be—while he was receiving education. The meaning is that such knowledge would not be knowledge acquired exclusively by the acquirer alone, but jointly with the help of a brother who took care of his family. And this is a fair rule.

[4] This definition of *Kâtyâyana* is not exhaustive. See *Durga Dut Joshi* vs Ganesh 32 All. 305 at p. 312. and also observations in Ghose's Hindu Law. 2nd Ed. p.520–521. The result of rulings on this text is—that the fruits of an ordinary elementary education could not be regarded as the gains of science acquired at the expense of ancestral wealth.

See *Pauliem Valor Chetty* vs *P. Surya Chetty* 1 Mad. 252. s. c. 4 I. A. 109-118. *Lachmin Kuar* vs *Debi Prasad* 20 All. 435. approving *Lakshman* vs *Jamnabai* 6 Bom. 225 and *Krishnaji* vs *Moro* 15 Bom. 32.

The detriment to the paternal wealth must be of an appreciable character, the mere fact that some patrimonial wealth was used for some time will not convert self-acquisition into a joint property. *Bachcho Kunwar* vs *Dharma Das* 28 All. 347.

Gains of prostitution were held to be self-acquisition. *Boologam* vs *Sworman* 4 Mad.330. A Vakil's gains were also held to be his self-acquisition. *DurvasaluGandharudu* vs *D. Narásammah* 7 Mad. 47 See also *Dhanukdaree Lall* vs *Ganpat Lal.* 10 Cal. 122. and *Bhagirthibai* vs *Sadashiv* Bom. H. C. P. J.(1880) page 126.

[5] Ch. IX. 208.

The answer.

(14) The argument is erroneous. Here there is no prohibition of anything arising by inference, but an explanatory[3] repetition of what was demonstratively true : for most of the texts in this chapter are merely[4] repetitions of what is already well-known to the world.

(15) Or you may be satisfied with considering this as an exception to what is suggested by the text[5] : "All the brethren shall be equal sharers of that which has been acquired by them in concert." And it is therefore a mere error to deduce such a suggestion from the word "eldest" and the like in the text before cited *viz.* "Whatever property the eldest acquires after the father's death &c." Therefore this[6] passage must be interpreted as an exception to the general doctrine, deduced from texts concerning gifts from friends and the rest *viz.* that they are exempt[7] from partition, both before the father's death and after his demise.

(16) So, other things exempt from partition have also been enumerated by **Manu** :[8] "Clothes, a vehicle, an ornament, cooked food, water

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[1] Of Manu. Ch. IX, 204.

[2] *i. e.*, the rule which may be set up as arising from inference or implications—

प्राप्ति—or things प्राप्त—are things previously known or assumed as established. (See Coll. Vol. VII, Bâlambhaṭṭi English Tr., p. 9. l. 15 and p. 10 l. 1. pp. 9 and 10 notes 1-4.)

[3] अनुवाद्—An explanatory repetition of, or reference to, what is already mentioned (See note 1 p. 9. Bâlambhatti English Tr.)

[4] लोकसिद्धस्यैव अनुवादकान्येव—Bâlambhaṭṭa thus explains the two एवs :—"The first excludes the suggestion that it was established by the rule of Śâstra, and the second excludes the suggestion of a prohibition."

[5] Of Bṛihaspati—Bâlambhaṭṭa.

[6] *i. e.*, the text of Manu IX. 204, cited above.

[7] There is a mistake in the print of the Sanskrit on page 80 l. 16 : Instead of वा विभाज्यत्वेन read वाऽविभाज्यत्वेन.

[8] Ch. IX, 219.

"and women, (property intended for acts which help) the acquisition[1] and "preservation of property, as well as the common way, are declared not "liable to partition." (**17**) The indivisibility attaches only to *clothes* which are worn. What is worn by each person belongs exclusively to him. As to what was worn by the father, these should be given by the brethren partitioning after (the death of) the father, to the Brâhmaṇa who partakes of food at his obsequies: As says **Bṛihaspati**, "The clothes, ornaments, bed, and similar articles belonging to the father, as also his vehicle "and the like, should be given, after honouring him[2], with fragrant drugs "and flowers, to the person who partakes of the funeral repast." But new clothes are indeed subject to distribution.

(**18**) *A vehicle*, *i. e.*, the means of conevyance, such as, horses, litters and the like. Here also, that on which each person rides, belongs exclusively to him. As for the father's, (it should be disposed of) similarly as the clothes. If the horses and the like be numerous, they must be distributed among co-heirs who live by the sale of them. If there cannot be a division on account of the unevenness of the number they belong to the eldest. *Vide* the text of **Manu**[3]: "Let him never divide a single goat or sheep, or a single beast with uncloven hoofs ; a single goat[4] or sheep it has been prescribed, belongs exclusively to the eldest." (**19**) As to *ornaments* also, that which was worn by each person is exclusively his. What was not worn, is common, and is indeed liable to partition. "[5]Such "ornaments, as are worn by women during the life-time of their husband, "the heirs (of the husband) should not divide among themselves; those "who divide become degraded." By specifying particularly "such ornaments as are worn" it appears that those which are not worn are liable to a division. (**20**) *Cooked food*—such as boiled rice, sweet cakes and the like–that also is exempted from partition (and) should be consumed according as circumstances allow. (**21**) *Water*, *i.e.*, a reservoir of water, such as a well and the like. And that being uneven,[1] must not be divided by regard to its value, but is to be enjoyed by turns.[2] (**22**) *Women, i. e.,* female slaves being uneven, must not be divided by (regard to) the value, but should be made to work by turns. But women kept[3] in concubinage (by the father), such as adulteresses and others, although even in number, must not be shared by the sons, *vide* the text of **Gautama**[4]: "Nor shall there "be a partition of women connected (with the father or other members of "family)". (**23**) The term *Yogakshema* is a conjunctive compound word made of (the two words) *Yoga* and *Kshema.* By the word *Yoga* is signified a cause of obtaining something not already obtained—*i. e.,* a sacrificial[5] act to be performed with fire consecrated according to (the rules of) *S'ruti* and *Smriti.* By the term *Kshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained, such as the giving of alms elsewhere[6] than at the altar, or the making of a tank or a garden and the like. Both these, though ancestral or though accomplished at the charge of the patrimony, are indivisible as **Laugakshi** declares: "The learned have named a conservatory "act *Kshema,* and a sacrficial one *Yoga*; and both these are pronounced indi-"visible, as also the bed and the seat[7]." (**24**) Some hold, that by the compound term *Yogakshema,* those who effect sacrificial and conservancy acts are intended *e. g.* the king's counsellers, the stipendiary priests, and the rest. Others say, parasoles, cow-tails, weapons, shoes, and similar things, are meant. (**25**) *The Common way,* or road of ingress and egress to and from the house, garden, or the like, is also indivisible. (**26**) As to the exclusion of land from partition as stated by **Us'anas** (in the text), "sacri-"ficial gains, land, written documents, prepared food, water and women, are

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[1] योग is the acquision of something not in the possession of the owner (आप्राप्तस्य प्रापणम्), and क्षेम is the preservation of that which has been acquired (प्राप्तस्य रक्षणम्). As sacrifices and other pious acts further such acquisitions and preservations, Colebrooke has translated the expression as sacrifices and pious acts. This term has been explained by Vijñânes'vara him-self further on (see p. 195 ll. 8-24).

[2] Colebrooke Translates *them*. Meaning that the worship with fragrant drugs and flowers is to be offered to the things given and not to the person to whom they are given. It is better that the worship is taken to be offered to the recipients of the things than the things themselves, (See also Sacred Books of the East Vol. XXXIII).

[3] Ch. IX. 119.

[4] Kulluka and other commenters of Manu add that not even the price of such is divisible. ज्येष्ठस्यैव तस्यान्न तु तत्तुल्यद्रव्यान्तरदानेन समीकृत्य विक्रीय वा तन्मूल्यं विभजेत् ।

[5] Manu IX. 200.

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[1] विषमम् 'incommensurate' would give an accurate idea.

[2] See *Govind* vs *Trimbak* 36 Bom. 275–277.

[3] अवरुद्धा—This term occurs later on in II–290 and Vijñânes'vara explains it thus: "female slave kept in the house and restrained from having intercourse with other men as a safeguard against any breach in the service."

[4] Ch. XXVIII, 47.

[5] योगक्षेम—योग is obtaining something not secured(अप्राप्तस्य प्रापणम्), and क्षेम is the preservation of that which has been secured.

इष्टापूर्त—The two kinds of acts which are the means of acquisition and preservation are called इष्ट and पूर्त and are thus defined.

इष्ट—"अग्निहोत्रं तपः सत्यं वेदानां चैव पालनम्। आतिथ्यं वैश्वदेवश्च इष्टमित्यभिधीयते" ॥

पूर्त—"वापीकूपतडागादि देवतायतनानि च। अन्नप्रदानमारामः पूर्तमित्यभिधीयते"॥

[6] बाहिर्वेदिदानम् "Erecting an outer sacred wall" would also be another way of translating it and may suit the context.

[7] आसनम् Colebrooke translates it as "chair."

"indivisible among kinsmen even to the thousandth degree," that has a reference to sons of a *Brâhmaṇa* by women of the *Kshatriya* or other castes. *Vide* the text:[1] "Land obtained by acceptance of donantion, must not "be given to the son of a *Kshatriyâ* or of any other wife of an inferior "tribe; even if the father give to such sons, on his death, the son of the "*Brâhmaṇi* wife may resume it." (**27**) *Sacrificial gains*, *i.e.* acquired by officiating[2] at religious ceremonies. (**28**) What is obtained through the father's favour, will be subsequently[3] declared exempt from partition. The supposition, that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.[4] (**29**) It is (thus) settled that whatever is acquired at the charge of the partimony, is subject to partition. But the acquirer shall, in such a case, have a double share under the text of **Vasishtha.**[5] " And if any one, "among them,[6] has made himself alone an acquisition, he may take a double portion of it. "

(**30**) The Author propounds an exception to this rule.

Yâjñavalkya Verse 120 (1).

But if the Common stock be improved, an equal division is ordained.

Mitâksharâ:—(31) Among unseparated brethren, *if the Common stock be improved* or augmented by any one of them, through agriculture, commerce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

[Colebrooke Sect. V.]

[Equal rights of father and son in property ancestral.]

(1) The distribution of the paternal estate among sons has been shown. The Author next propounds a special rule concerning the division of the grandfather's effects by grandsons.

Yâjñavlkya Verse (120). (2).

Among claimants by different fathers, the allotment of shares shall be by regard to the fathers.

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[1] Of Bṛihaspati—Bâlambhaṭṭa.

[2] याजनेन (causal) *i. e.*, by causing a sacrifice to be performed by another.

[3] II, 123 (1) p. 177 ll. 15-20.

[4] See p. 177 ll. 15-20.

[5] Ch. XVII, 51.

[6] *i. e.*, brethren separating.

Mitâksharâ: **(2)** Although grandsons have by birth a right of ownership in the grandfather's estate equally[1] with sons, still the distribution of the grandfather's property must only be adjusted [2]through their fathers and not with reference to themselves. The meaning here expressed is this: when unseparated brothers die, [3]leaving male issue and one has two sons, another has three sons, and a third has four sons, and thus the number of sons (of these) is unequal, then the two receive a single share which appertained to their father, the other three also take a single share appertaining to their father, and the (last) four also obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue, the same method should be observed, the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed[4] by the texts.

An objection anticipated.

(3) If the father be alive and separate (from the grandfather), or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place, since it has been directed, that "shares shall be allotted in "right of the father, if he be deceased;" or admitting a partition to take place (it may be urged that) it should be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt the Author says:—

Yâjñavâlkya Verse 121.

Land which was acquired by the grandfather, a corrody and also chattels; in these the ownership of the father and also of the son is the same.

Mitâksharâ: (4) *Land* (**Bhûḥ**) a rice field or other ground. *Corrody* (**Nibandhaḥ**)—i. e. from each bundle of leaves so many leaves.[5] Similarly so

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[1] अविशिष्टम्—Without any distinction.

[2] पितृद्वारेण—*i.e* by regard to their father *through* whom they are connected with the remoter ancestor or with the family generally. द्वार—means a door—"medium."

[3] Lit : after procreating sons.

[4] *i.e.* This is the meaning of the text: when the claimants are removed by more than one degree from the common ancestor, the division shall be by reference to the root of each group, and not by regard to the several individual claimants themselves. In other words the distribution will be *per stirpes* and not *per Capita.*

This text has been referred to in several cases, some of which are :—*Gangu* vs *Chandrabhagabai* 32 Bom. at 284. *Kalgowda* vs *Somappa* 33 Bom. at 681 s.c. 11 Bom. L. Rep. 806. *Debi Prasad* vs *Thakurlal* 1 All. at p. 111. *Appaji* vs *Ramchandra* 16 Bom. at 33, 34.

[5] Colebrooke translates this as "from a plantation of betle pepper."—But the original does not specify any kind of 'leaves.' The general word पर्ण (parṇa) is used.

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many nuts from an orchard of areca[1]—as has been defined[2] (before). *Chattels* (**Drawyam**) gold, silver &c. **(5)** Such as was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means; *in these* the *ownership of the father and of the son* (**tatra pituḥ putrasya cha swâmyam**) is universally[3] known, and bearing this in mind a partition takes place; *for* (**hi**) *i.e.* since, the right is *the same* (**sadṛis'am**) *i.e.* equal (or alike); therefore it is not that partition can be made only by the father's choice; nor is there a double share for the father. **(6)** Hence also it is ordained by the preceding text, (II. 120) that "The allotment of shares shall be by regard to the fathers", although the right be equal. **(7)** The text (II. 114) "when the father makes a partition" relates to property acquired by the father himself. So also the text:[4] "Two shares let the father keep for himself, when making a partition" relates to self-acquisitions. The dependence of sons, as affirmed in the following passage:[5] "While both parents live, the control "remains, even though he[6] has arrived at old age", must relate to effects acquired by the father or mother. Similarly the text: "They[7] are not masters, "while their parents are living." **(8)** Thus, while the mother is capable of bearing more sons, and the father retains his worldly desires even when the father does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son. **(9)** So likewise, the grandson has even the right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather. But he has no right of prohibition if the effects were acquired by the father, as he is dependent on him. On the contrary he must give his consent. **(10)** Consequently the difference is this: although he has a right by birth in his father's and in his grandfather's property, still, since he is dependent on his father in regard to the father's property, and since the father has a predominant interest as it was acquired by himself, the son must give his consent to the father's disposal of his own acquired property. On the other hand, as regards the grandfather's estate, however, the (right of the) ownership of both is without a distinction, and (consequently) the right of prohibition also exists.[1] **(11)** By the text:[2]—"If the father recover ancestral property "not recovered by his co-heirs, he shall not, unless willing, share it with his "sons, for in fact it was acquired by him."—while laying down that if the father recover property, which had been acquired by an ancestor, and taken by a stranger, but not recovered back by the grandfather, he need not himself share it, against his inclination, with his sons, just as is the case with his self-acquisitions even **Manu** shows that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather.

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[1] क्रमुकफल—The word क्रमुक is not conjoined to the areca tree alone.

"क्रमुकस्तु पुमान् भद्रपुस्तके ब्रह्मदारुणि ।
फले कार्पासिकायाश्च पट्टिकालोध्रपूगयोः ॥" मेदिनीकोशः

[2] *i. e.* in com. on Yâjñavalkya Âchârâdhyâ I. 318 p. 92 ll: 18—19.

[3] For an interesting discussion of this and other passages in this connection see Telang J: in *Appaji Narhar* vs *Ramchandra* 16 Bom. 29 (F. B.) at p. 37 and also Sargeant C. J. at pp. 33–34. : see also *Karuppi* vs *Sankara* Narayan 27 Mad. at p. 312.

[4] Of Nârada Ch. XIII. 12.

[5] Author unknown. Mr. Colebrooke in a note in his translation remarks that Bâlambhaṭṭa assigns it to Manu, but it is not found in the Bâllambhaṭṭi (see Collections vol. 6 p. 152), nor in Manu.

[6] Colebrooke translates it as "though *they* have arrived at old age," meaning the parents but the reading of the Mitaksharâ is जरयाऽपि समन्वितः—"even though he has arrived at old age"—*i.e.* the son.

[7] ["They have not power over it–the paternal estate–*i. e.* while their parents live" Must be referred to the same subject.] Colebrooke Tr.

[Colebrooke Sect. VI.]

[Right of a posthumous son and of one born after partition.]

(1) How shall a share be allotted to a son born subsequently to a partition of the Estate? Anticipating this question the Author replies

Yâjñavalkya Verse 122 (I).

When the sons &c. have been separated, a son who is (afterwards) born of a woman equal in class, shares the distribution.

Mitâksharâ:—(2) The sons[3] being separated (**vibhakteshu**) one born afterwards of a wife *equal in class* (**Savarṇâyâm**) shall *share the distribution.* (**vibhâgabhâk**). What is distributed, is a distribution. The distribution is of the allotments of the father and mother. He shares that and so he is a *Vibhâgabhâk* (who is entitled to a share in the distribution). In other words, he obtains, after (the demise of) his parents, both their portions. The mother's portion, however, only if there be no daughter, for it is declared[4] that "Daughters share the residue of their mother's property, "after payment of her debts." **(3)** But sons by a woman of a different tribe, receive merely their own proper share, from the father's estate. And as for the mother's property (they get) the whole of it.

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[1] These passages were referred to in the following cases: *Devi Prassad* vs *Gunvanti Koer* 22 cal. 410. *Kalgavda* vs *Somappa* 33 Bom. at p. 681. *Sital* vs *Madho 1* 1 All. at p. 397. *Muttayan Chetti* vs. *Sivagiri* 3 Mad. at p. 380.

[2] Ch. IX. 209.

[3] *Dular Koeri* vs *Dwarkanath Misser* 32 cal. at 241.

[4] **Yâjñawalkya II 118 at p. 190 ll. 5–8.**

(4) The same rule is propounded by **Manu**:[1] " A son, born after a "division, shall take 'the parental wealth only'. The term parental,(*pitryam*) must here be interpreted as " appertaining to both father and mother:" for it is ordained[2] that: " A son born before (partition), has no claim "on the wealth of his parents; nor one begotten after it, on that of his brother. " **(5)** The meaning (of this text) is this : one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated; nor is one, born of parents separated[3] a proprietor of his brother's allotment. **(6)** Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained[4]: "All the wealth which is acquired by the father himself, who has made a "partition with his sons, goes to the son begotten by him after the[5] "partition : those, born before it, are declared to have no right." **(7)** As for those, however, who re-united themselves with the father after partition, the son born after partition should share with these the goods of the father after his death as directed by **Manu**:[6] " Of if there are any who are "re-united with him, he shall share with these."

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(8) When the sons have made a partition subsequently to the death of the father, how shall a share be allotted to one born afterwards ? Anticipating this question the Author says.

Yâjñavalkya Verse 122 (2).

His allotment must be made only[7] out of the visible estate corrected for income and expenditure.

Mitâksharâ:—**(9)** A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is *his allotment*[8] **(Tadvibhâgaḥ)**. (It may be asked) but whence shall it be taken? (so) The Author replies, "*out of the visible estate*" (**dris'yât**) taken by the brethren. Of what sort? *Corrected for income and expenditure* (**Âya-vyaya-vis'odhitât**). *Income* (**Âya**) is that which is produced daily, monthly or annually. *Expenditure* (**Vyaya**) is the liquidation of debts contracted by the father. Out of the amount of property which has been corrected for such income and expenditure, a share should be taken and given as "his allotment". **(10)** The meaning here expressed is this: Including in the several[1] shares the income thence arisen, and subtracting the father's debts, a small portion should be taken from the remainder of each of the shares respectively, and an allotment equal to their own portions, should (thus) be formed for the son born after partition.

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[1] Ch IX. 216.

[2] By Bṛihaspati—Bâlambhaṭṭi p. 154.

[3] *i. e.* from their elder children—Bâlambhaṭṭi.

[4] *By Bṛiaspati*—Bâlambhaṭṭi.

[5] *Kalgauda* vs. *Somappa* 33 Bom. at 684; *Krishna* vs. Sami 9 Mad. 71.

[6] Ch. IX 216.

[7] Colebrooke translates " His allotment must absolutely be made &c." and in a footnote explains it by a reference to *Subodhini*. *Subodhini*, however, only states that the allotment should be made *only* from the *visible* &c. (दृश्यादेव तद्विभाग इत्यर्थः), premising this by explaining वा as being used in a restrictive sense (मूलवचनस्य वा शब्दोऽवधारणे)—see Subodhini page 53 ll. 31—32.

[8] His allotment—तद्विभागः *i.e.* the share of such a one born after partition.

(11) This must be understood to be likewise applicable to a nephew who is born, after separation, of a brother[2] who was childless at the time of partition, when the pregnancy of his widow was not manifest. **(12)** But if the pregnancy be manifest, the distribution should be made after awaiting (her) delivery. As says **Vasistha**:[3] "Now (follow the "rules regarding) the partition of heritage among brethren. And (let it "be delayed) until those widows who are childless, (but are pregnant) bear "sons". This text should be interpreted thus:[4] "Until the delivery of those widows who are pregnant."

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[1] प्रातिस्विकेषु भागेषु *i.e.* in each distributive share. प्रातिस्विक is the unit or basic quantity of a share.

[2] *Bâlambhatti* notices another reading (see p. 155 l. 4), *viz.* "अप्रजसि" which connects it with the wife of the brother—There would, however, be no difference in meaning.

[3] Ch. XVII 40—41.

[4] Mr. Colebrooke adds the following note to this passage: "The most natural construction of the original text is "Partition of heritage is among brothers and women who are childless, until the birth of issue." The authors of the *Kalpataru* & *Chintamani* follow that interpretation and conclude that "a share should be set apart for the widow who is likely to have issue (being supposed pregnant) and when she is delivered, the share is assigned to her son, if she bear male issue; but if a son be not born, the share goes to the brethren, and the woman shall have a maintenance." The author of the *Smriti-Chandrikâ* acknowledges that to be the natural construction of words, but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text nearly as it is explained in the *Mitâksharâ viz.* "Among brothers, who have continued to live together until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known; and does not take place immediately after the obsequies." *Visvesvara-Bhatta* in the *Madana-Pârijâta* exhibits a similar interpretation: "Partition takes place after awaiting the delivery of widows who are evidently pregnant."

(13) It has been stated that a son born after partition takes the whole of his father's goods as well as of his mother's. But, here, if the separated father or mother affectionately bestow ornaments or other present on a separated son, then in such a case the gift should not be resisted by the son born after partition, nor, even, if actually given must it be resumed. So the Author says:

Yâjñavalkya Verse 123 (1).

The wealth which had been given by the parents to one belongs to him.

Mitâksharâ:—(**14**) What is given, such as an ornament &c. by the mother and the father, being separated (from their children) to a son separated before, belongs exclusively to him; and does not become the property of the son born after partition. (**15**) By parity of reasoning, what was given to any one, even before partition, appertains solely to him. (**16**) So when there is no son born after partition, and the brethren divide the affect of the separated parents after their death, what had been given to each of them, belongs severally to each and is shared by none other. This must be understood.

[**Colebrooke Sect. VII.**]

[Shares allotted to provide for widows and for the nuptials of unmarried daughters. The initiation of uninitiated brothers defrayed out of the joint funds.]

(**1**) When[1] a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed by the text,[2] "If he make the allotments equal &c." With a view to point out an equal participation of the mother even when the partition takes place after the death of the father, the Author says:

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[1] See *Dular Koeri* vs *Dwarkanath Misser* 32 *Cal.* 241 and *Betti Kunvar* vs *Janki Kunvar* 33 All. 118, where at p. 121 the Court observes "This (*i. e.* this passage in the text allowing a share to the mother) in our opinion implies an actual division of the family property, that is, a completed partition under which there is a division of interest as well as separate possession. We do not think that a mere severance of interest where no actual division of the property takes place confers on the mother a right to a share equal to that of her son."

And in *Sheo Narain* vs. *Janki Pershad* 34 All. 505, the same court observes at p. 509 after referring to this text: "It is thus manifest that Yâjñawalkya and the author of the *Mitâksharâ* make a distinction between partition during the life-time of the father and partition after his demise. In the former case a share is allotted to the wife of the father; in the latter to the mother of the sons effecting partition."

[2] See Yâjñawalkya II. 115 (Sk. p. 77 ll. 9—10 Eng. Tr. p. 184 ll. 9-11).

Yâjñavalkya Verse 123 (2).

Of heirs dividing after (the death of) the father, let the mother also take an equal share.

Mitâksharâ : (**2**) *Of heirs dividing* (**Vibhajatâm**), *after the father* (**Piturûrdhwaṃ**) *i. e.* after the death of the father, *let the mother also* (**Mâtâapi**)[1] *take* (**haret**) a *share* (**ans'am**) *equal* (**samam**) to that of her son; provided no *stridhana* has been given. But if any had been given, she is entitled to half a share, as the Author will mention[2] later on.

(**3**) If any of the brethren be uninitiated[3], when the father dies, who is competent to complete[4] their initiation? So the Author says

Yâjñavalkya Verse 124 (1).

The uninitiated (brothers), however, should be initiated by those brothers who have been initiated before.

Mitâksharâ :—(**4**) *By the brethren* (**Bhrâtṛibhiḥ**), who make a partition after the death of the father, *the uninitiated* (**asanskṛitâḥ**) brothers *should be initiated* (**sanskâryâḥ**) at the charge of the common estate.

(**5**) In regard to unmarried sisters, the Author states a special rule:

Yâjñavalkya Verse 124 (2).

And the sisters also, but by giving them, as an allotment, the fourth part of his own share.[5]

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[1] For a discussion as to the persons indicated by the word mother see *Mari* vs *Chinnammal* 8 Mad. 118 at p. 121 &c.

[2] Yâjñawalkya II. 148.

[3] As to what is the meaning of initiation in the case of males and females see—*Sundrabai* vs *Shiv Narayan* 32 Bom. 81 at pages 86, 87—96 referring to and discusing the case in 27 Mad. 206.

[4] को अधिक्रियते *Ko Adhi Kriyate*? Tr. "who has the authority" (to perform the ceremonies of these.)

[5] (1) Applying this text, among others, the Calcutta High Court held in *Churaman Sahu* vs *Gopi Sahu* 37 Cal. 1. that "it was comptent to a Hindu widow governed by the Mitâksharâ Law to make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of the daughter's gavana ceremony (at which the marriage of the daughter would be completed and consummated) and that such a gift was binding on the reversionary heirs of her husband."

Recently the Bombay High Court held in the Full Bench Case of *Vyasacharya* vs *Venkubai* 37 Bom. 251 at page 263 that this text did not justify the settlement of immovable property by an adopting widow in favour of her daughter attaining majority and assented to by the natural father of the adopted boy at the time of adoption.

Mitâksharâ: (**6**) The meaning of the above passage (is this): *And the sisters also* (**Bhaginyascha**) who are not (already) married, must be disposed of in marriage by the brethren. By doing what? By contributing a fourth part of their own allotments.

* PAGE 84.

Thus it appears, that daughters also participate after the death of their father. Here in saying "only his own share," the meaning is not that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed, but that the girl of (a wife of) a particular caste shall be allowed to participate for a quarter of such a share as would be assignable to a son of the same caste as herself. The sense expressed is this: if the maiden be (the daughter of) a *Brâhmaṇi*, a fourth share becomes hers of so much as is the amount of an allotment for a son by a *Brâhmaṇi* wife. (**7**) Thus for example, if a certain person had one wife *viz.* only a *Brâhmaṇi* and one son and one daughter, then in such a case, the whole paternal estate should be divided into two parts, and one such part be subdivided into four, and the quarter share being given to the girl, the residue shall be taken by the son. When, however, there are two sons and one daughter, the whole of the paternal estate should be divided into three parts, and one such part be sub-divided into four, and the quarter having been given to the girl, the remainder shall be shared by the two sons. If, however, there be one son and two daughters, the father's property should be divided into thirds, and[1] one (of these) shares be severally sub-divided into quarters, and having given two (quarter) shares to the two daughters, the son shall take the entire residue. Thus should be applied the rule in the case of brothers and sisters of a like caste whether of an even or uneven number.

(**8**) When, however, there is one son of a *Brâhmaṇi* wife, and one daughter of a *Kshatriyâ* wife, then the paternal estate should be divided into seven parts, and the parts which would be assignable to the son of a *Kshatriyâ* wife should be divided into four parts, and having given such a fourth part to the daughter of a *Kshatriyâ* wife, the residue, the son of the *Brâhmaṇi* shall take. Or, if there be two sons of a *Brâhmaṇi* wife, and one daughter by a *Kshatriyâ* wife, the father's estate shall be divided into eleven parts, and from these, the three parts which would be assignable to a son by a *Kshatriyâ* wife should be divided into quarters, and having given such fourth part to the daughter of the *Kshatriyâ* wife, the entire residue, the two sons of the *Brâhmaṇi* wife shall equally divide and take. Thus the mode of distribution should be inferred in all cases of even or uneven number of brothers and sisters, of different castes.

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[1] Mr. Colebrooke has–"and two shares severally sub-divided into quarters." As however, the quantity of the distributive share allotted comes to be the same as given here, this variation in the reading does not make any difference.

(9) Nor, is it right to interpret the text: "by giving the fourth part of his own share &c." as signifying "giving money, sufficient for her marriage, by considering the word "fourth" as having no special significance, as this would contradict the text of **Manu**[2]: "To the Maiden sisters, "let the brothers give (portions) out of their own allotments respectively, "each out of his own share, a fourth part; those who refuse to give, shall "become degraded." **(10)** The sense of this passage is as follows: Brothers of the *Brâhmaṇa* and other tribes should give to their sisters of the *Brâhmaṇa* and other tribes respectively portions out of their own allotments as prescribed (for them) having regard to their tribe—*i.e.* under the text[3] to be mentioned subsequently *viz.* "a *Brâhmaṇa* should take four shares" &c., and should give to each a quarter out of their respective allotments. And it is not meant that a quarter should be given by deducting it from one's own share; but that to each maiden should be given severally the quarter of a share ordained for (a son of) that particular class. The mode of adjusting the division when the castes are dissimilar, as also when the number is uneven, has already been stated. And the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin in the text: "Those who refuse to give shall become degraded."

An objection.

(11) If it be alleged, that here also, the mention of a quarter has no special significance, and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be expressed, the answer is, no; there is no support for the assertion that the allotment of a quarter of a share has no special significance in both[4] the *Smritis*; and, moreover, the withholding of it is pronounced to be a sin.

The Answer.

Another objection answer.

(12) As for what is objected by some, "that a sister who has many brothers would be greatly enriched if (it be understood that) the (text prescribing an) allotment of a fourth share were positively meant and that a brother, having many sisters would be entirely deprived of wealth." Such a

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[1] अविवक्षया-विवक्षा is वक्तुमिच्छा–Meaning, intention, purpose—It always signifies—a particular purpose. This is explained in Sanskrit by the significant word शक्तिः "power or force."

[2] Ch. IX.—118.

[3] Yâjñavalkya II. 125.

[4] *i.e.* in texts of Yâjñavalkya and Manu.

conclusion already stands obviated by what has been said before. It is not here directed that a quarter shall be deducted *out of* the brother's own share and given to his sister, whence any such consequence should arise. (**13**) Hence, the interpretation of **Medhâtithi** who has no compeer, as well as of other writers is square and accurate, and not that of **Bhâruchi.** (**14**) Therefore, after the death of the father, a maiden is also entitled to a share. But if it be before, she obtains that only, whatever it be, which her father gives; since there is no special precept respecting this case. Thus all is unexceptionable.

[Colebrooke Sect. VIII.]

[Shares of sons belonging to different tribes.]

(**1**) By the text[1] "If the father make a distribution &c." the mode of adjustment of a distribution among brothers of equal caste, whether made with each other or with their father, has been pronounced. The Author now describes the (mode of) partition among brethren dissimilar in class.

Yâjñavalkya Verse 125.

* PAGE 85.

The sons of a *Brâhmaṇa* (in the several tribes) have four shares, or three, or two or one respectively according to the tribe (of each); the children of a *Kshatriya*[2] have three portions, or two, or one; and those of a *Vaiśya*[2] take two parts or one[3].

Mitâksharâ. (**2**) Under the text[4] "Three (wives) respectively according to the tribe of each &c." it has been pointed out that a *Brâhmaṇa* may have four wives, a *Kshatriya* three, a *Vaiśya* two, and a *S'ûdra* one. In such case, (the expression) *the sons of a Brâhmaṇa* (**Brâhmaṇâtmajâḥ**) means the sons begotten by a *Brâhmaṇa*.

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[1] Of Yâjñawalkya II. 114 p. 182 ll: 20–23 before.

[2] *i.e.* under similar circumstances.

[3] This verse is the further development of the law as to intermarrige as laid down in verse 57 of the Âchârâdhyâya. Mr. Mandlik in a note to this passage observes:—"Marriages with women of a disimilar class have been prohibited in this *Kali* age" and refers to Nirnayasindu III. citing a text of *Nârada*.

" द्विजानामसवर्णासु कन्यासूपयमस्तथा" Tr. "so also the marriage of a *dwija* with a maiden of a dissimilar class."

He observes in conclusion—"the text of Yâjñavalkya has therefore no application now."

[4] Âchârâdhyâya 57.

(**3**) **Varṇas'aḥ** (*according to the tribes of each*). By the word *varṇa* are indicated women of the different classes such as the *Brâhmaṇa* and others.

The termination *S'as* (शस्), subjoined to a noun in the singular number and locative[1] (or other) case bears a distributive sense conformably with the grammatial rule[2] *viz.*

> "The affix Śas (शस्) comes optionally after crude forms denoting numbers, and words denoting units of a coin in the singular number, when a distributive sense is to be expressed and the word is a *Kâraka.*

And, hence, sons begotten by a *Brâhmaṇa* (on women) in the several tribes, *shall* respectively *have four shares, or three, or two, or one* (**Chatustridwyekabhâjâḥ-syuḥ**) *i. e.* they shall be entitled to such shares.

(**4**) The meaning here expressed in this: The sons begotten by a *Brâhmaṇa* on a *Brâhmaṇi* take four shares apiece[3]; similarly those begotten by him on a *Kshatriyâ*, receive three shares each, on a *Vaisyâ*, two each, and on a *S'ûdrâ* one each.

(**5**) *The children of a Kshatriyâ* (**Kshatrajâḥ**) *i.e.* begotten by a *Kshatriya* on women of the several tribes—for that is here understood,—*have three shares, two and one.* (**Tridwyekabhâgaḥ**) *respectively* in the order of their tribe (**Yathâkramam**): *i. e.* the sons begotten by a *Kshatriya* upon a *Kshatriyâ* take three shares each, upon a *Vaiśyâ* two each, and upon a *S'ûdrâ* one each. (**6**) *Those of a Vaiśya* (**Vidjâḥ**) *i. e.* begotten by a *Vaiśya*—for here again the expression *Varṇaśaḥ* (respectively in the order of their tribes) is understood—have, respectively, two shares or one in the order of their tribes. *i.e.* those begotten by a *Vviśya* upon a *Vaiśyâ*, take two shares apiece, and upon a *S'ûdrâ*, one each (**7**) Since, a *S'ûdra* cannot have a wife of a different class from his own, because one wife only is allowed[1] to him, partition among his sons takes place in the same manner as has been mentioned before.

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[1] अधिकरणकारक—Kâraka (कारक) is the relation subsisting between a noun and a verb in a sentence, or between a noun and other words governing it. There are six such *Kârakas* belonging to the first seven cases excepting the genetive *viz.* (1) कर्तृ (2) कर्मन् (3) करण (4) संप्रदान, (5) अपादान and (6) अधिकरण (for the locative.)

[2] — "संख्यैकवचनाच्च वीप्सायाम्"— Pâṇini' 5-4-43. संख्या=words denoting numbers—that by which the sense of unit is expressed.

[3] The meaning here expressed may be thus illustrated: Suppose a *Brahmâṇa* dies leaving behind him four sons born of wives of each class respectively. Then his estate should be divided into 10 shares out of which.

4 Should be given to the son by the Brâhmaṇi wife.
3 ,, ,, ,, ,, Kshatriyâ ,, .
2 ,, ,, ,, ,, Vaisyâ ,, .
1 ,, ,, ,, ,, Śûdrâ ,, and so on.

(**8**) Although, the expression "shall have four shares, or three, or two or one" has been used without any restriction, still, it must be understood to relate to (property) other than land obtained by the acceptance of a gift. For it is declared[2]: "Land obtained by acceptance of donation, "must not be given to the son of a *Kshâtriyâ* or other wife of inferior tribe; "eventhough their father give it to them, the son of a *Brâhmaṇi* may resume "it when his father is dead. (**9**) Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the sons born of a *Kshatriyâ* or other inferior women. For the son by a *Sûdrâ* woman is specially prohibited[3]: "The son begotten on a *Sûdrâ* "woman by any man of a twice-born class, is not entitled to a share "*of land*[4]." (**10**) Now, if land acquired by purchase and similar means did not belong to the sons of a *Kshatriyâ* or *Vaisyâ* wife, the special protection of a son by a *Sudrâ* woman would not be pertinent. (**11**) As for the text:[5] "The son of a *Brahmaṇa*, *Kshatriya* or *Vaiśya* by a *Sûdrâ* "wife is not entitled to a share in the inheritance; whatever his father may "give him, let that be his property?"—that too relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *Sûdrâ* woman. When, however, no affectionate gift has been bestowed (on him by his father), he participates for a single share.[6] Thus there is nothing contradictory.

[**Colebrooke Sect. IX.**]

[Distribution of effects discovered after partition.]

(**1**) Something is here added respecting the residue after a general distribution of the estate. The Author directs the distribution of property withheld by fraud of brothers &c.

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[1] Manu III. 13. The text is शूद्रैव भार्या शूद्रस्य.—"A *S'ûdra* woman only must be the wife of a *S'ûdra* man."

[2] By *Bṛihaspati—Bâlambhaṭṭi.*—See.

[3] प्रतिषेध—is a prohibition and not a mere exception by omission.

[4] This also is a text of *Bṛihaspati*—see Bâlambhaṭṭi p. 160. l. 20 & Dâyabhâga ch. 9 p. 22.

[5] Of Manu. IX. 155.

[6] Colebroeke adds in bracket (of the movables).

Yâjñavalkya Verse 126.

Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares; this is a settled rule.

(**2**) **Mitâksharâ**: *Effects* (**drawyaṁ**) *i.e.* the common property such as had been withheld by co-parceners from each other, and was also not known at the time of the general distribution of the estate, and such as have *been discovered after the partition* (**Vibhakte yad-driss'yate**) of the patrimony, *let them divide that in equal shares* (**tat-samaiḥ-ans'aiḥ-vibhajèran**); *this* thus is the settled rule. (**Iti Sthitiḥ**) *i. e.* the rule of the law.

(**3**) Here, by saying "in *equal* shares", a partition with deductions has been forbidden. By saying "let *them* divide" it has been pointed out that the property is not to be taken exclusively by the person by whom it was discovered. (**4**) Thus, since the text is thus significant, it does not imply that no offence is committed by embezzling the common property.

An objection stated.

(**5**) But, **Manu** has indicated an offence only in the eldest, if he appropriate to himself the common property, and not so on the part of the younger brothers? *Vide* the text[1]. "An eldest brother who from avarice shall defraud his younger brothers, shall "no longer be honored as the eldest, shall be deprived of his "additional share and be punished by the king. (**6**) The answer is, it is not so. For by pronouncing such conduct criminal in the case (even) of an elder brother, who is admittedly independent and is in a quasi-parental position, it is more assuredly shown—under the rule in the maxim[2] of 'the loaf and the staff'—to be criminal in the younger brothers, who are subject to the control of the eldest, and are held in tutelage as sons. And, moreover such conduct has been declared to be an offence without exception in the **S'ruti**: "Him, indeed, who deprives an "heir of his right share, he does certainly destroy; or, if he destroy not "him, he destroys his son, or else his grandson." (**7**) He who deprives an heir *i. e.* a person entitled to a share *i. e.* debars or excludes him from a share *i. e.* does not yield to him his proper allotment, such a one who is

The Answer.

* PAGE 86.

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[1] Chapter IX. 213, read in the text "सोऽज्येष्ठः."

[2] दण्डापूपिकन्याय,–is the maxim of the *loaf and the staff* or the *stick and the cakes.* See note on page 86 orig. Sanskrit—If a number of *cakes* are attached to a *staff or stick* and the stick is carried off, or eaten by mice, it need not be expressly stated that the cakss have had the same fate—it is an inference which necessarily follows. This rule is the same as the *a fortiori* reasoning of the West.

thus debarred of his share, destroys or annihilates *i. e.* renders a criminal that person who so debars him of his right; or, if he do not immediately destroy him, he destroys his son or his grandson. (**8**) It is (thus) pronounced to be criminal *in* any person to withhold common property, without any distinction as to the eldest (or youngest &c.).

An objection.

(**9**) It is argued that blame is not incurred by one who takes the goods, thinking them (to be) his own, under the notion that the common property also becomes his property and appertains also to him (individually). (**10**) That is wrong. For, though he took it thinking it his own, still he has taken the property of another person, contrary to the injunction which forbids him so doing and thus he certainly does incur blame.

The Answer.

(**11**) As[1], in answer to a proposed solution of a difficulty. "If an oblation of green kidney beans be not procurable, and black kidney bean's be used in their stead by reason of the resemblance, the prohibition contained in the rule *viz.* "black kidney beans are not fit to be used in sacrifices" does not apply, since they were used by mistake for ground particles of green kidney beans it is on the contrary maintained, as the right opinion, that, "while the ground particles of green kidney beans be taken, the ground particles of black kidney beans are also actually employed as being unforbidden, and the prohibitory command is consequently applicable in this case (by inference)." **12** Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

[**Colebrooke Sect. X.**]

[Rights of the **Dwyâmushyâyana**[2] or son of two fathers.]

(**1**) Intending to propound a special allotment for the *Dwyâmushyâyana* (or son of two fathers), the Author describes the nature of that relation :—

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[1] The argument of the objector and the reply to it is sufficiently apparent from the text itself. According to the fixed rules of interpretation सादृश्य—resemblance is also a part *i. e.* अवयव of the thing itself. And the meaning here is that माष (the black kidney beans) having been prohibited generally, the prohibition extends to their सादृश्य also—which is a part of the *Mâsha* itself. and therefore, although mixed with other sorts, have to be avoided, and for this reason they must not be used as a substitute for the green ones. (See also Bâlambhatti p.162 & Subbodhini p. 56).

[2] "As here described, the Dwyâmushyâyana is restricted to one description of son *viz. the Kshetraja* or "son begotten on the wife"; but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive father." Colebrooke. See also *Bassava vs. Lingangaoda* 19 Bom. 428 at p. 454 & 472 (a case of Lingayats—based on custom) & Mayne's Hindu Law p. 173.

Yâjñavalkya Verse 127.

A son, begotten by one who has no male issue, on the soil of another man, under a legal appointment, is lawfully heir, and giver of funeral oblations, to both.

Mitâksharâ: (**2**) Under the rule of the law contained in the text[1]. "To a sonless widow, one commanded by the *Guru &c.*" *by one who has no male issue* (**aputreṇa**) *i.e.* by the husband's brother or the like, *on the soil of another* (**parakshetre**) *i. e.* on the wife of another, a son *begotten under a legal appointment* (**niyogotpâditaḥ**) from venerable persons, *to both* (**ubhayoḥ**) *i.e.* the owner of the seed as well as that of the soil, he is heir (**rikthi**) *i. e.* successor to their estates and *giver of funeral oblations* (**pindadâtâ**), according to law (**dharmataḥ**).

(**3**) The meaning of this is as follows: When the person who is duly appointed, such as the husband's brother, or other person, and being even himself destitute of a male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both to himself and for the other, the son, whom he so begets, is the child of two fathers and denominated *Dwyâmushyâyaṇa.* He is heir to both, and offers funeral oblations to both (after their death.) (**4**) When however, the person appointed, has male issue, and has intercourse with the wife for the sake of raising up issue to her husband only, the child so begotten by him, is son of the owner[2] of the wife, and not of the [3] owner of the seed. And, such a one, by this restriction, is not heir of the owner of the seed, nor is he qualified to present funeral oblations to him, as has been so declared by **Manu**[4]; "Where by a special compact a field is made over (to another) for (sowing) "the seed, then the owner of the seed as well as of the field are both consi-"dered, in this world, as joint sharers of it (*i.e.* of the crop.)" (**5**) *By special compact. viz.*, when the field is delivered by the owner of the soil to the owner of the seed, on an aggreement in this form: "Let the child which will be here produced, belong to us both," then of the child begotten in that soil the owners of both the seed and the soil are considered by the mighty sages as joint sharers. (**6**) So[5] "If there be no special "agreement with respect to the crop between the owner of the field and the

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[1] *i. e.* by *Yâjnâvalkya* in Âchâsrâdhyâya 68-70. in which the husband's brother, a sapinda, or a sagotra have been allowed to raise issue on the sonless widow of their deceased relative and such a son is called the *Kshetraja* son.

[2] *i.e.* of the wife's husband by marriage.

[3] *i.e.* the procreator.

[4] Ch. IX—53.

[5] Manu Ch. IX—52.

"owner of the seed, the benefit clearly belongs to the owner of the field; for "the receptacle is more important than the seed." (**7**) " If there be no special agreement with respect to the crop" *i.e.* with a special agreement *viz.* "Let the child begotten here belong to us both ", whichever child is begotten on another's ground, that child verily is of the owner of the soil; for, the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

✱ PAGE 87.

Appointment.

(**8**) Even here, however, the appointment[1] for raising up issue is only in relation to a woman who had been betrothed, since any other such appointment is forbidden by **Manu**[2]. For, after premising an appointment thus: "On failure of "issue, the desired offspring may be secured, by a woman who has been "duly authorised, from a brother-in-law or from a *Sapinda* (by means of "cohabitation with him). The person, however, so appointed to raise "issue on the widow, shall at night, annointed with clarified butter, and "silent, beget one son (only), but never a second in any case." **Manu**[3] has himself prohibited this practice : " By regenerate men, no widow "must be authorized to conceive by any other; for any, who authorize her "to conceive by another, violate the primeval law. The raising of an issue "by appointment is nowhere mentioned in the *mantras*[4] regarding mar-"riage, nor is the re-marriage of widows mentioned in the rules concerning "marriage. This practice which is reprehended by the learned *Dwijas* as "fit only for beasts, is referred to even in connection with men, while King "Vena held sovereign sway. He, possessing the whole earth, and there-"fore eminent among[5] saintly Kings, formerly brought about a confusion of "tribes when his intellect was infatuated by lust. Since that time, "whoever, through folly, appoints a woman whose husband is dead, to "have intercourse for the sake of progeny, sages censure such a one."

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[1] For Colebrooke translates. "Commission"—See Ballambhaṭṭi p. p. 166-108, where a dissent from this doctrine is noted and passages are cited showing that a father is free to dispose of his girl if after troth verbally plighted, the husband die before the actual celebration of the marriage. In such a case she remains a damsel (*Kanyá*) and may be disposed of by her father.

[2] Ch. IX—59-60.

[3] Ch. IX—64-68.

[4] *i. e.* hymns from the *Veda* bearing on, or chanted at, nuptial rites.

[5] A *Rájarshi* is a King who has all the characteristics of a saint. The compound is solved in Sanskrit to indicate "that he is a king as well as a saint"

An objection considered.

(**9**) Nor is an option[1] to be inferred from the contrast of precept and prohibition, since they, who authorize the practice of appointment, are expressly censured: and disloyalty is strongly reprobated in speaking of the duties of women, while continence is much praised. As says **Manu**[2]: "Better that she (the faithful wife) emaciate her body by living voluntari-"ly on pure flowers, roots and fruit; but let her not, when her lord is "deceased, even pronounce the name of another man"—By this text, having prohibited recourse to another man for the sake of maintenance, **Manu**[3] interdicts the recourse to another man, even for the sake of progeny thus: "Let her, until death, continue patient (of all injuries), self-controlled "and continent, and maintain before her vision that most incomparable rule "of virtue, followed by women[4] devoted to one husband only. Many thousands "of Brâhmaṇas, having avoided sensuality from their early youth, have gone "to heaven (even) without continuing their race. And like those Brahma-"charis[5] a virtuous wife, who, after the death of her husband settles herself "in a uniform continent life, ascends to heaven, eventhough she have no "son. But a woman who from a desire to have offspring violates her duty "towards her (deceased) husband, brings on herself disgrace in this world "and loses her place (with her husband) in the next world." Therefore it is not right to deduce an option[6] from the injunctions of affirmation and prohibition.

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[1] Mark the gloss of *Medhâtithi* on this verse. He says that union with another man is bad, but emaciating the body is also bad.' The text of Manu. "Better that she emaciate the body &c." has an implied censure also for the emaciating of the body. It only means that between the two evils the evil of emaciating the body may be preferred. " कामशब्दप्रयोगोऽरुचिसंसूचनार्थम् । देहक्षपणमप्यकार्यम् । इदं त्वन्यदकार्यतरं यदन्येन पुरुषेण संप्रयोगः " ।

[2] Ch. V. 157.

[3] Ch. V. 158-161.

[4] एकः पतिर्यस्याः सा एकपत्नी—vide the rule of Gr. 'नित्यं सपत्न्यादिषु' (4–1–35). "In forming the feminine with the affix ङीप् (ई), the word पति always takes the substitute न् in the words like 'सपत्नी' and the rest."

[5] *i.e.* persons taking a lifelong vow of celibacy and living accordingly.

[6] According to the rule of interpretation विरोधे तु विकल्पः, when there are two contradictory texts, an option is inferred. So the Author says that no case for inferring an option arises on the ground that there are two injunctions of a contradictory character *viz.* one of affirmation and another of negation. An option (विकल्प) would arise if the two injunctions were of an equal character (तुल्यार्थास्तु विकल्पेरन्). But here, while a censure is passed upon those who authorize such a practice, none such is to be found in reference to those who forbid it. The *Vidhi* (*i.e.* the affirmative injunction) and the *Nishedha* [illegible] the injunction of a negative character) are therefore not equal, and therefore an [illegible]n not be inferred (See *Balambhaṭṭi* p. 165. ll. 6–10. Subodhini p. 57 ll 15–20.)

(**10**) Thus *Niyoga*[1] having been prohibited in the case of a wife sanctified by marriage, what then is a *Niyoga* sanctioned by law? so the (same[2]) author says. "The damsel, whose husband shall die after troth "verbally plighted, the brother of the husband may take[3] her according to "the following rule: having espoused her in due form, she being clad in "white garments, and pure in her conduct, let him privately approach her "once in each proper season[4], until issue be had."

(**11**) It appears from this very passage, that he, to whom a damsel was verbally given, is her husband, even without a formal acceptance on his part. If he die, his own uterine brother, whether elder or younger, shall take her *i. e.* marry her. "In due form" *i.e.* as directed by the *Śâstras*. "having espoused her" *i. e.* wedded her, and according to the following rule, namely the rule directing the besmearing of the body with clarified butter, and the restraint in speech &c.—let him "privately *i. e.* in secret, approach her, clad in a white robe, "and pure in her conduct" *i.e.* having a restraint on her mind, speech and gesture, once at each menstruation, until conception. (**12**) Such a marriage is nominal[5], and a mere part of the form in which an authorized widow shall be approached, like the injunction of clarified butter &c. It does not make her the wedded wife of her brother-in-law. **(13)** Therefore, the issue thus begotten belongs to the husband of the wife[6] and not to the brother-in-law. By special agreement, however, the issue may belong even to both.

[**Colebrooke Sect. XI.**]

[Sons by birth and adoption.]

(**1**) A distribution of shares among sons, equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the Author first describes their characteristics :—

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[1] *Niyoga*—is raising issue on the wife of a deceased person. Sec. Yâjn. I. 68-69. —Note 1 on page 211.

[2] *i.e.* Manu Ch. IX. 69–70.

[3] विन्देत—"know her."

[4] *i.e* at each menstruation period.

[5] The meaning is:—that as the injunctions as to clarified butter and other observances are prescribed as mere forms in approaching an authorized widow, so these espousals are a mere part of that intercourse, and not a principal and substantive part, whence a regular marriage between the parties might be inferred. See Colebrooke citing Balambhaṭṭi p. 167 & Subodhini p. 57 l. 23-25.

[6] Lit. Tr. "owner of the soil" क्षेत्रस्वामिनः *i.e.* to the man who was her hus[illegible] marriage.

Yâjñavalkya Verses 128 to 131 and 132 (1).

* PAGE 88

The *Aurasa i.e.* legitimate son is he who is procreated on a lawfully wedded wife; equal to him is the son of an appointed[1] daughter. *Kshetraja* is one begotten on a wife[2] by a *sagotra* relation of her husband or by another. (128) One secretly produced in the house is known as "a secretly born son." A "damsel's child" is one born of an unmarried daughter and is considered as the son of the maternal grand-father (129). A child born of a woman whose marriage had or had not been consummated, is called "the son of a re-married woman". He, whom his mother or father may give (in adoption) shall be considered as "the adopted son". (130) "A son bought" is one sold by them. "A son made" is one adopted by the man himself. One who gives himself is "a son self-given". One who was (along with his mother), accepted in marriage while he was in the womb is called "a son received with the bride" (131). He, who, having been deserted (by his parents) is taken (for adoption) is "a deserted son". [132 (1)]

Mitâksharâ : (2) The issue of the breast (*uras*) is an **Aurasa** *i. e.* legitimate son. He, moreover, is one *born of a lawfully wedded wife*[2] (**Dharmapatnijaḥ**). A woman of equal tribe, espoused in lawful wedlock, is "a legally wedded wife,"—and a son begotten on her is a true and legitimate son, and is[3] chief in rank. (3) *Equal to him is the son of an appointed daughter* (**Tatsamaḥ putrikâ-sutaḥ**)—'equal to him' *i. e.* equal to the legitimate son. The son (born) of a daughter (appointed) is a *putrikâ-suta*. And accordingly he is equal to a legitimate son. As has been said by **Vasistha:**[4] "This damsel, who has no brother, I will give "unto thee, decked with ornaments; the son who may be born of her, shall "be my son". Or that term may mean a daughter regarded as a son by reason of the fact that the daughter herself is to be regarded as a son. Still such a one is only similar to a legitimate son, as she has more of the particles of the mother's body and less of the father's. As says **Vasistha**[5]

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[1] *i. e.* a daughter appointed to raise issue under the contract mentioned by *Vasistha* (17.17)— see further on.

[2] *Wife i.e.* of the person with whom she was lawfully wedded.

[3] This passage means that such a son would have preference when there is a competition between him and other kinds of sons, and not that other kinds of sons are not heirs at all. See *Viramitrodaya* Ch. II. Part II. 2.

And according to *Madana-Parijata* the sons born of lawfully wedded wives although of different tribes are all legitimate. See also *Bâlambhaṭṭi* p. 169.

These passages were referred to in *Minâkshi vs Râmânâda* 11 Mad. 49 at 52 and *Tulshi Ram vs Behari Lal* 12 All. at p. 250.

[4] Ch. 17-17.

[5] Ch. 17-15—The reading in the *Vasistha Sûtra* is (third) तृतीय: and not (second) द्वितीय.

"The second is an appointed daughter." The meaning is that the second (kind of) son is the appointed daughter[1] herself. (**4**) The son of two fathers (*Dwyâmushyâyaṇa*) is inferior to the natural father's legitimate son, because he is produced in another's soil, (**5**) Kshetraja *is one begotten on a wife by a* sagotra *relation of her husband or by another* (**Kshetrajaḥ kshetrajâtastu sagotreṇetareṇa wâ**). *By another* (**itareṇa**) *i. e.* by one who is not a *sapinḍa* or by a brother of the husband is a *Kshetraja* son. (**128**)

(**6**) *The secertly born* (**Gûdhajaḥ**) son is one *secretly produced* (**prachchanna utpannaḥ**) in the husband's house. By excluding[2] the case of a child begotten by a man of inferior or superior tribe this must be understood to be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same tribe.

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[1] The *putrikâ-putra* is of four descriptions. (1) The first is the daughter appointed to be a son. (see *Vasistha* 17-15 पुत्रिकेवेति). (2) The next is her son. He is called "the son of an appointed daughter", without any special contract. He is, however, to be distinguished from the next" *i.e.* the third class. He is not in the place of a son, but in the place of a son's son and is a *daughter's son.* Accordingly he is described as a *daughter's son* in the text of *S'ankha* and *Likhita* : " An appointed daughter is like unto a son, as Prâchetasa has declared : her offspring is termed a son of an appointed daughter : he offers funeral oblations to the maternal grandfathers and to the paternal grandsires. There is no difference between a son's son and a daughter's son in respect of benefits conferred." (3) The third description of a son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation as stated by *Vasistha* 17-17. He appertains to his maternal grandfather as an adopted son. (4) The fourth is a child born of a daughter who was given in marriage with a stipulation in this form " the child who shall be born of her, shall perform the obsequies of both." He belongs as a son to both grandfathers. But, in the case where she was in thought selected for an appointed daughter, she is so without a compact, and merely by an act of the mind. (Manu Ch. IX 127 and 136.), *Hemâdrî* quoted in Colebrooke. See also *Thakur Jeebnath Singh vs Court of wards* L.R. 2 I. A. 163-166. *Rahi vs Govinda* 1 Bom. 102 and in particular *Karuppi Nachiar vs Sankara Narayana Chetty* 27 Mad. 300 at p. 312 sqq ; and *Jamiyatram vs Bai Jamna* 2 Bom. H. C. Rep. 11 at p. 17.

[2] *i. e.* This clause starts with the assumption that the begetter, though unknown, is not of a dissimilar class. The only thing unknown is the particular identity of the man. For the ignorance as to the particular person must be the husband's, not of the wife and the knowledge of his equality in tribe, may be obtained through her, for surely she must know who he is. But, if she really do not know his tribe, having been secretly violated by a stranger, in a dark night, then the child may bear the name of *Gûdhaja*, but not a *Gûdhaja* son properly so called, as described before [see *Bâlambhaṭṭa* p. 170. ll. 15-18 citing *Madanapârijâta*]. *Bâlambhaṭṭa* also refers to the opinion of some according to which the child must be abandoned.

As to the status of such a son, whose father is unknown, he will have the same *status* and *domicile* as that of his mother and the same opinion is quoted by *Colebrooke* as being that of *Vâchaspati—Mis'ra* in the *S'raddha-Chintâmani.*

(**7**) *A damsel's*[1] *child* (**Kâninaḥ**), however, is a son begotten on a damsel by a man of equal class, (under the same limitations) as mentioned before; and he is the son of his maternal grandfather, provided she be unmarried and abide in her father's house. But if she be married the child becomes the son of the husband alone. As says **Manu**[2]: "A son "whom a damsel secretly bears in the house of her father is considered as "the son of the husband, and denominated 'damsel's son', as being born of "an unmarried woman". (**129**).

(**8**) *The son of a remarried woman* (**Paunarbhavaḥ**) is the son begotten by a man of equal class on a twice-married woman *whose marriage had or had not been consummated.* (**Akshatâyâm wâ Kshatâyâm wâ**)

The adopted son.

(**9**) He, who[3] is given by his mother under her husband's direction, when the husband is absent on a journey or is dead; or who is given by the father, or by both (parents) to a person of the same class, becomes *the adopted son* (**Dattakaḥ**) of him to whom he is given. As says **Manu**:[4] "He, whom his mother or his father, "in a time of distress affectionately gives with (a libation of) water and "who is of the same class, is called a son given."

(**10**) By specifying distress, (it is intimated that) the son should not be given unless there be distress. This prohibition regards the giver[5]. (**11**) So an only son must not be given *Vide* the text of **Vasistha**[6]: "But let him not give or receive an only son" (**12**) Nor, though a numerous progeny exist, should an eldest son be given, since he alone is the principal among those who fulfill the office of a son as is shown by the following text[7]: "By the eldest son, as soon as born, a man becomes 'the father of male issue'."

Mode of acceptance.

(**13**) The mode of accepting a son for adoption is propounded by **Vasistha**:[8] "One who desires to adopt a son, shall as-"semble his kinsmen, announce his intention to the

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[1] See *Bâlambhaṭṭi* p. 170 ll. 20-24. "Damsel does not here signify unmarried only, for even with that import, the term is frequently used in the sense of one who has had no connection with a man." It signifies a woman with whom a regular marriage has not been consummated.

[2] Ch. IX. 172.

[3] These passages have been referred to in a number of cases, as principal among which the following may be noted:—*Rangubai vs. Bhagirthibai* 2 Bom. 380; *Shri Balusu Gurulinga Swami vs. Shri Balusu Ramalakshmamma* 26 I.A. 113—22 Mad. at 410.

[4] Ch. IX. 168.

[5] And not the taker. See *Balambhaṭṭi and Subhodhini.*

[6] Ch. XV. 3.

[7] Of *Manu.* Ch. IX. 106.

[8] Ch. XV. 6.

king, make burnt-offerings in the middle of the house, reciting the Vyâhṛitis, and take (as a son) an un-remote kinsman, just the
*PAGE 89. nearest among his relatives.[1]"

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[1] Note the following very important remarks of West and Bûhler in connection with this. (3rd edition p. p. 884-888). Say the learned authors:

"The gradual abolition of grosser means of supplementing a family in favour of the system of adoption is itself a striking evidence of progress in civilization. The appointment of a daughter held an intermediate place between this and the coarse materialism of the earliest modes of substitution. It is no longer recognized, but traces of the institution still remain in the existing law. From it on the one hand has been derived the right of succession of the daughter and the daughter's son for adoption. As an imitation of a real son the adopted son ought to be born of some woman whom the adoptive father could have married. This excludes the son of a daughter, and such is the law generally received amongst the higher castes, but among the lower castes and sub-divisions of the great S'ûdra class almost everywhere, and amongst some of the higher castes by their customary law, the daughter's son is deemed fit for adoption, and even the most fit on account of the place he might formerly have taken as a son by appointment, as well as of the blood connection on wich the system of appointment itself was founded."

"The passage of Vasishtha which directs that a man desiring to adopt shall make his selection from amongst near relatives, and for choice take the nearest, is so obscurely expressed as to admit of various interpretations. How the ingenuity of commentators has been excercised upon it may be seen in Colebrooke's note to the Mit. Chap. I Sect. 11 Para 13. The Samskâra-Kausthubha and the Nirnaya-Sindhu, construing the direction most liberally, approve the adoption, failing a Sagotra Sapinda, of a daughter's or a sister's son. The Shastris, following the Vyavahâra-Mayukha, are almost uniformly opposed to this, except in the case of S'udras. They rely on the impossibility of a real paternal and filial relation between the fictitious father and a son so born; and the decisions in Bombay must be considered perhaps to have confirmed the Shastris' view, but customary law seems in a measure at least to have been represented by the doctrine of the two works referred to. These were no doubt written under the influence of ideas which shaped the customary law, and they afford an example in their divergence from the more generally received authorities of parallel growths of doctrine springing from the same original source, yet taking quite different lines of development according to the medium in which they were placed. The real nearness of daughter's son once procured real acceptance for the doctrine of appointment, and this in its turn has facilitated the admission of the daughter's son as fit for adoption. The Śâstra had however to be interpreted accordingly, and this interpretation setting aside the ordinary doctrine of a necessary difference in the families of birth of the real mother and the adoptive father paved the way for the admission of the sister's son. In the South of India the Brahminical law was for the most part apparently accepted only with this qualification, adapting it to previously existing customs, as in the case of marriage between the children of a brother and a sister rejected by the stricter law of the North, but allowed in the South, because it could not be prevented."

On this passage observe the learned judges of the Madras High Court: "The divergence between the generally accepted authorities and actually existing customs, and

(14) By the expression—"an un-remote kinsman"-the adoption of one very distant by country and language is forbidden.

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the survival of the customs sanctioned by the earlier law appear to be accounted for in the above passage on sound historical principles, and the conclusions therein arrived at to receive confirmation from what we find to be established by evidence in the case before us." *Vayidinada* vs. *Appu* 9 Mad. at p. 54.

* The following is the note of Mr. Colebrooke referred to in the above passage:—

"*Raghunandan, in Udvâha-tatwa,* has quoted a passage from the *Kálíká-Puráṇa,* which, with the text of Vasistha, constitutes the ground-work of the law of adoption as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law; and the authenticity of the passage itself is contested by some, and particularly by the author of *Vyavahar-Mayukha,* who observes truly that it is wanting in many copies of the *Káliká-Puráṇa.* Others following the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not a stranger, more advanced both in age and progress of initiation. The following version of the passage conforms with the interpretation of it given by *Nanda-Pandita* in the *Dattaka-Mimáṇsá.* "Sons given and the rest, though "sprung from the seed of another, yet being only initiated (by the adopter) under his "own family name, become sons (of the adoptive parent). A son having been regularly "initiated under the family name of his (natural) father, unto the ceremony of tonsure, "does not become the son of another man. When indeed the ceremony of tonsure and "other rites of initiation are performed (by the adopter) under his own family name, "then only can sons given and the rest be considered as issue: else they are termed slaves. "After their fifth year, O King, sons are not to be adopted. (But) having taken "a boy five years-old, the adopter should first perform the 'sacrifice for male issue'."

"The *Putreshti* or 'sacrifice for male issue', mentioned at the close of this passage "is a ceremony performed according to the instructions contained in the following text "of *Veda*: "He who is desirous of issue, should offer to fire, parent of male offspring, an "oblation of kneaded rice roasted upon eight potsherds; and to Indra, father of male "offspring, a similar oblation of rice roasted on eleven potsherds: fire grants him progeny; Indra renders it old." (Colebrooke).

"*Nearest* among his relations"—*Bhandhu-Sannikrishtam* is the expression in the text. There are also other readings variously noticed regarding this passage *Viz.* by *Nanda Pandita* in his commentary on *Vishnu.* "Adûrabândhavam asannikṛishtam eva"—which gives an entirely different rule *viz.* "one whose kindred dwell in a country not far off, and one not connected by affinity." *Vijnánes'vara* himself explains the term *Adurabándhavam* in the next line by the remark that by this expression the adoption of "one very distant by country and language is forbidden. And *Bâlambhaṭṭa* (p. 172) after referring to the text of *Vasistha* (XV. 7-8) remarks: "If possible— he should take a "**Bandhusannikṛishtam** *i.e.—Kinsman nearly related*—e.g. a brother's son or the like; "on failure of such a one he should take (**Adura'bandhavam**), *one whose kinsmen are not "remote, i.e.* whose means of livelihood is in a near place and whose father and other relations are near, and whose family and character are consequently known". Mr. Colebrooke also notices the other readings *viz.* those given in *Kalpataru* and *Ratnakara viz.* "Adûre bândhavam a-*Sannikrishtameva*"

(**15**) The same (ceremonial) should be extended to the case of sons bought, self-given, and made: for parity of reasoning requires it.

Sons bought &c. described.

(**16**) *The son bought* (**Krîtaḥ**) is one who *who by them* (**tâbhyâm**) *i. e.* by both mother and father or by either the mother or the father, *was sold* (**vikrîtaḥ**); and as before, excepting, an only son, or an eldest son, in a time of distress and belonging to the same class. As for the text of **Manu**:[1] *viz*–"He is called a son bought, whom a man, for "the sake of having issue, purchases from his father and mother: whether "the child be equal or unequal to him"—it must be interpreted, whether like or unlike in qualities, not in class; since the Author concludes[2] by saying "This law is propounded by me, in regard to sons equal by class". (**17**) *The son made* (**Kṛitrimaḥ**) *is one adopted by the man him-self* (**swayam kṛitaḥ**)—The son made however, is the son adopted as a son himself by the man, who is desirous of male issue, and enticed by the show of money and land, and being an orphan without father and mother: for, if they be living he is subject to their control. (**18**) *The son self-given* (**Dattâtmâ**) is one who, being bereft of father and mother, or abandoned by them, presents himself, saying "Let me become thy son." (**19**) *The son received*[3] *with the bride* (**sahodnajaḥ**) is one who being in the womb, is accepted (in the course of the marriage) when a pregnant bride is accepted. He becomes the son of the husband. (**131**).

(**20**) *A son deserted* (**Apaviddhaḥ**) is one who having been *deserted* (**utsṛishtaḥ**) by his father and mother *is taken* (for adoption)–(**gṛihyate'**). He is the son of the taker.

In all cases he must be of the same class (with the adoptive father).

(**21**) Having, thus, premised sons, chief and secondary, the Author explains the order of their succession to the heritage.

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[1] Ch. IX. 174.

[2]—See further on II. 133 (1). p. 224 l. 16.

[3] If a woman be married while pregnant, the child born of that pregnancy is a *Sahodha* son; such a one is to be distinguished from a *Kânina* (son of an unmarried damsel), because he is not born of a damsel. It is not clear how he can be distinguished from a *Gûdhaja*, unless a too technical construction is placed on the suffix *ja* born, since after the marriage he is no longer one who is secretly *born*. Whereas the chief element of a *Gûdhaja viz.* the concealment of the individuality of the progenitor still remains there.

Yâjñavalkya Verse 132 (2).

Among these, in the absence of the preceding, each next succeeding is a giver of the funeral cake and the inheritor of a share.

Order of Succesion.

Mitâksharâ:—(22) Of these aforementioned sons of twelve kinds, in the absence of the preceding, each next in order, as enumerated, must be considered to be the *giver of the funeral cake* (Pindadaḥ) *i. e.* performer of the *S'râddha*, and *the inheritor of a share* (ans'aharaḥ) *i. e.* successor to the effects. (23) If there be an *Aurasa*[1] (legitimate) son and a *Pautrikeya* (son by appointed daughter), **Mànu** propounds[2] an exception to the seeming right of the *Auraśa* son to take the whole estate: "A daughter having "been appointed, if a son be afterwards born, the division of the heritage must "in that case be equal: since there is no right of primogeniture for a woman."[3] (24) So also, even in the case of others, a quarter share to inferior sons, even when the superior ones exist, has been ordained by **Vasistha**:[4] "When a son has been adopted, if a legitimate son be (afterwards) born, "the adopted son shares a fourth part." (Here) the mention of 'the son adopted' is indicative also of others such as the son bought, the son made and the rest by reason of the context.[1] (**25**) Accordingly **Kâtyâyana** says: "If an *Aurasa* son be born, the other sons take a fourth part,[2] "provided they belong to the same tribe; but if they be of a different class, "they are entitled to food and raiment only." (**26**) "Those who belong to the same tribe" *e. g.* the adopted and the *Kshetraja* sons and the like, these, when an *Aursa* son exists, share a fourth part. But those who belong to a different class *e.g.* "the damsel's son," "the son secretly born," "the son received with the bride," and "the son of a re-married woman," these—when an *Aurasa* son exists, do not take a fourth part, but are entitled to food and raiment only. (**27**) Although there is a text of **Vishnu** *viz.* "Exceptionable sons are, a damsel's child, a son of concealed "origin, one received with a bride, and a son by a twice-married woman; "these never share the funeral cake nor the inheritance", still it is intended to prohibit a fourth share when an *Aurasa* son exists. But if there be no legitimate son or other (preferable claimants), even the damsel's child and others succeed to the whole of the paternal estate, under the text, "In the absence of the preceding, each next succeeding &c." (Yâjñ: II. 132 p. 22).

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[1] The reading in the *Mitâksharâ* is *Aurasa-pautrikeya-samavâye i. e.* when the legitimate son and the son of an appointed daughter co-exist. Mr. Colebrooke translates—"If there be a legitimate son and *an appointed daughter*"— and adds in the foot-note "so this passage is interpreted by *Vis'weswara* and *Bâlambhaṭṭa*." But *Bâlambhaṭṭa* distinctly refers to the passage as it occurs in the text &c. (p. 174 l. 15.) "*Aurasa-pautrikeyayor-mithaḥ-Samawâye ityarthaḥ.*" While *Vis'weswara* has (p. 58 l. 17.) "*Aurasa-putrasya putrikâyâscha sadbhâve ityarthaḥ.*"

[2] Ch. IX. 134.

[3] This passage is obscure and is not in a line with the logical accuracy and perspicuity which are the invariable characteristics of *Bhatta Vijñâneswara.* Taking the text of *Manu* by itself it says that a female is not entitled to the rights of primogeniture, *Bâlambhaṭṭa* (p. 174 l. 17) explains it by suggesting that it is meant to meet a position which may be taken on the strength of the rule that the appointed daughter herself is a son (पुत्रिकैव पुत्र इति द्वितीयार्थाशयेनाह) while *Vijnaneswara* refers to the text of *Manu* for showing that when an *aurasa* and a *pautrikeya* compete, it may be urged that the entire estate should go to the *Aurasa*, had it not been for the rule of *Manu* in IX· 134.

The *Subodhini* (p. 58 l. 17-23), has attempted to explain the passage thus. "By this text of *Manu*, the eldest does not get the preference share allowed to him in the text (of *Manu* Ch. IX.112 see above p.187 l.5-7). Indeed, under this text he is only entitled to an equal portion. Ordinarily an Aurasa alone is entitled to the entire heritage—but by the text of *Manu*—"The division must be equal "—the Aurasa does not take the entirety and thus the *pautrikeya* takes a share. This seems to be the only way in which the two passages can be connected together.

[4] Ch. XV. 9.

(**28**) Similarly, although there is a text of **Manu**:[3] "The *Aurasa* "son alone is the (sole) heir of his father's wealth; but, as a matter "of compassion he may give maintenance to the rest", that too must be considered as applicable to a case, where the son adopted and the like are hostile to the *Aurasa* son, and devoid of good qualities. (**29**) Here a special rule regarding a *Kshetraja* son has been propounded by the same[4] Author, "Let the *Aurasa* son, when dividing the paternal heritage, give "a sixth part, or a fifth, of the prtrimony to the *Kshetraja* son" *i. e.* where there is hostility as well as want of good qualities then a sixth part, but if only one of those defects exist, a fifth part, and thus the two cases should be discriminated.

* Page 90.

(**30**) Although **Manu**[5] having premised two sets of six sons, has declared the first six to be heirs and kinsmen and the last six to be not heirs but kinsmen *viz*: "The *Aurasa* son, as also the son begotten on a "wife, son adopted, and also a son made, a son secretly born, and so a son cast

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[1] *v. l.* पुत्रीकरणाविशेषात् Tr. " for they are equally adopted as sons." *Colebrooke* prefers this reading.

[2] This reading is followed in the *Madanaparijâta*, and *Viramitrodaya*. But the *Kalpataru*, *Ratnâkara* and other compilations read a " third part." Vide *Jîmûta Vâhana* C. 10§. 13. *Colebrooke*.

[3] Ch. IX. 163.

[4] Manu, Ch. IX. 164.

[5] Ch. IX 159–160.

"off, are the six heirs and kinsmen (159). The damsel's son, the son "received with the bride, the son bought, as also the son begotten on a "remarried woman, the son self-given, and the son born of a *S'ûdrâ* woman, "are six not heirs but kinsmen (160);" (**31**) that too must be expounded as signifying, that the first six may take the heritage of their father's *sapindas* and *samânodakâs*, if there be no nearer heir, but not so the last six; (The tie of) kinship (*bândhavatvam*) however, is alike in the case of both by reason of their being *Samânagotra* and *Sapinda* and thus being capable of performing the duty of offering libations of water and the like. (**32**) It must be thus expounded; for the mention of a given son in the following passage[1] is intended for any adopted succedaneous son: "A son given "away must never claim the family and estate of his natural father. The "funeral cake follows the family and the estate, and of him, who gives "(away his son), the funeral offerings fail." (**33**) The right of inheriting their father's estate, however, is, without exception, equal in the case of all in the absence of sons mentioned next above each, in the order of precedence, as the text[2]: "Not brothers, nor parents, but sons are heirs to the estate of the fathers," purposely is intended as affirming the succession of all subsidiary sons other than the *Aurasa* son, the right of the *Aurasa* son having been already propounded by the text:[3] "The *Aurasa* son alone is the (sole) heir of his father's wealth", and the word heir (*dâyâda*) being well-known as used to signify any successor other than a son as in (the expression) "The heirs also should be made to give &c." (**34**) The variation which occurs in the institutes of **Vasistha**[4] and others respecting some one in both sets, must be understood as founded on the difference of having been[1] or not been endowed with qualities. **(35)** But the assignment of the tenth place to the son of an appointed daughter in **Gautama's** text[2], is relative to one differing in tribe. Therefore this is established, that in the absence of those (mentioned) in the preceding order, those following next in order will be entitled to the inheritance.

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[1] Manu Ch. IX. 142.

[2] of Manu Ch. IX. 185.

[3] of Manu Ch. IX. 163.

[4] See Subodhini (pp. 60-61). Referring to this passage in the Subodhini Mr. Colebrooke adds the following note. *Manu* declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue (IX. 165) and proceeds to define the remaining ten succedaneous sons (IX. 166-178.) But *Vasistha* states the appointed daughter as third in rank (XVII—166), which is a disagreement in the order of enumeration. The same must be understood of other institutes of law *viz. Vishnu* 15-2-37. *Nârada* 13-44-45. *Devala* &c). How then is the succession of the next in order on failure of the preceding reconcilable? The author proposes this difficulty with its solution. His notion of the mode of reconciling is this: *Manu* declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs, but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore, to be a loose enumeration, and not one arranged with precision. Accordingly *Manu*, in saying, "Let the inferior in order take the heritage," does not limit this very order, but intends one different in some respects: and the difference is relative to good and bad qualities. The same must be used with the variations in other codes. Moreover what is ordained by *Yâjñavalkya* is consistent with

(36). As for the text[3]. "If among (several) brothers sprung from "one (father), one have a son, Manu has declared them all as fathers of "male offspring on account of that son," that also is intended to forbid the adoption of others, *if* a brother's son can possibly be adopted, and not for setting up a claim as a son, as that would be inconsistent with the subsequent text (Yâjn. II. 135.) "Their sons, the *Gotrajas* and the *Bandhus* &c."

(37) The Author next adds a restrictive clause by way of conclusion to what had been stated.

Yâjñavalkya Verse 133 (1).

This law is propounded by me in regard to sons equal by class.

Mitâksharâ:—(38) *Only* among sons equal by class, *this* (**ayam**) *law* (**vidhiḥ**) *i. e.* (the one) expressed in the text: "in the absence of the "preceding, the next following in the order (of enumeration) &c," and not among sons differing in class. **(39)** Here, moreover, the damsel's son, the secretly born son, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters, as it has already been stated that they are not within the definition of tribe and class. **(40)** So also, since issue procreated in the direct order of the tribes, as the *Mûrdhâvasikta* and the rest, are

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propriety. For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father and from the soil appertaining to him, have preference before the son given and the rest. The son received with a bride, produced from soil which the adoptive father accepts for his own is placed in the second set by the authority of the text or because the mother did not appertain to the adoptive father at the time when the child was begotten. The whole is therefore unexceptionable.

[1] गुणवत् &c (p. 90 l. 14) have a reference to the sons and are adjectives qualifying that term.

[2] Ch. XXVIII. 31.

[3] Of *Manu*. Ch. IX. 182.

comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of interitance devolves on the son of the wife and the rest.

(41) But the son by a *Sûdrâ* wife, though legitimate, does not take the whole estate, even on failure of other issue. Thus **Manu** says[1]: "But "whether a man have sons or no sons (by wives of other classes), no more "than a tenth part, must be given to the son of a *sûdrâ* woman, according to law." **(42)** "Whether he have sons" *i. e.* whether he have existing the male issue of a regenerate tribe; or "have no sons" *i.e.* have no issue of regenerate tribe, in either case, upon his demise, the son of the wife or other (kind of son,) or any kinsman (*sapinda*), shall not give to the son of the *Sûdrâ*, more than a tenth part of the father's estate. **(43)** Thus it appears from this very text, that the son of a *Kshatriyâ* or a *Vaisyâ* wife takes the whole of the property on failure of issue by women of equal class.

[**Colebrooke Sect. XII**][2]

[Rights of a son by a female slave, in the case of a Sûdra's estate.]

(1) The Author next delivers a special rule concerning the distribution of the estate of a *Sûdra.*

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[1] Ch. IX. 154. The author of the Subodhini reconciles this text of *Manu* with that of Yâjnavalkya (II 125. p. l. above) in which it has been laid down that the son born of a *Sûdrâ* woman is entitled to one share, by noting that one share in that text of Yajñavalkya is obviously one of the 10 shares into which the estate is to be divided under that text *viz.* 4, 3, 2 & 1. (See. Subodhini p. 61 ll. 22-25.)

[2] The question as to the status and the share of a *Dâsi-putra* was referred to and discussed in the following cases. In almost all these cases the passages from *Yâjñavalkya* and *Vijñânesvara's* commentary of the *Mitaksharâ* thereon were referred to and discussed. The following is **a short summary of the decisions** having a special reference to this part of the text.

In any view of the texts, an illegitimate son is looked upon as a member of a family, entitled to some, if not all the, rights of a member as such. He is entitled to maintenance in those cases where he does not succeed by survivorship or interitance. In this respect Hindu law differs from English law in so far as it does not treat him as a *filius nullius.* See *Hargobind Kuari* vs. *Dharam singh* 6 All.329. *Rahi* vs. *Govin.* 1 Bom.97. Among the Sudra caste, the illegitimate sons in default of legitimate sons are entitled to inherit. *Inderum* vs. *Ramaswamy* 13 M. I. A. 141. *Sadu* vs. *Baiza* 4 Bom 37 (F. B.)

The illegitimate son of a *Kshatriya* by a *S'ûdrâ* woman is not a Śûdra, but of a higher caste called *Ugra. Bṛindâvana* vs. *Radhâmani* 12 Mad. 32.

N. B—An illegitimate daughter is not entitled to inherit, the claim of the sons being based on texts which specially mention them, the daughters not being so mentioned, ***Bhikya*** **vs.** ***Balu*** **32 Bom. 562=10 Bom. L. R. 736.**

Yâjñavalkya Verse 133 (2).

A son begotten by a Sûdra even though upon a female slave, may take a share by choice (133.)

But after the death of the father, the brothers should make him a half-sharer; if he have no brothers, he may take the whole property, unless there are sons of daughters. (134.)

✻ Page 91.

Mitâksharâ:—(2) A son begotten by a *Sûdra* on a female slave, obtains a share *by choice* (**Kâmataḥ:**) *i. e.* by the option of the father. But, after (the death of) the father, if there be sons of a wedded wife, then these brothers should make that son of the female slave, a half-sharer. *i. e.* they should give him a half[1] from their own allotment. However, should there be no sons of a wedded wife, the son of the female slave shall take the whole estate, provided there be no daughters of a wedded wife, nor their sons. But if there be such, the son of the female slave participates for half a share only. (**3**) From the mention of a *Sûdra* in this place, moreover, (it follows that) the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor

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And in *Sarasuti* vs. *Mannu* 2 All.134. the offspring of a kept woman or continuous concubine was held to be on the same level as to inheritance as the issue of a female slave by a Śûdra; and he was held capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of the Agra Tenancy Act, 1901. *Ramkali* vs. *Jamma* 30 All.508. And in *Jogendra Bhupati* vs. *Nittyanand* 11Cal.713 and 18 Cal. 151 (P.C.) 17 I.A. 128, both the High Court and the Privy Council recognised the right of an illegitimate as a coparcener with his legitimate brother in the ancestral estate and he was held to be entitled to take by survivorship even in the case of an Impartible estate. He does not, however, acquire a joint interest in the property with his father in the ancestral family property. It is only after the father's death that his right commences, so that if the property is disposed of by the father during his lifetime, he cannot claim a share in it after his death. *RamSaran* vs.*Tekchand* 28 Cal.195. Nor does the illegitimate son become a co-parcener in the fullest significance of the term, and therefore he is not entitled to claim by survivorship against the collateral relations of the father. *Krishnayyan* vs. *Muttusami* 7 Mad. 407. *Parvathi* vs. *Thirumalai* 10 Mad. 334.

In a case of disputed succession among Sudras to an Impartible estate where the claimants were sons by two wives of the same caste, but of different grades, the son by a wife though junior, but of a superior grade, was held to be entitled to preference. *Ramasami* vs *Sundaralingasami* 17 Mad. 422.

[1] And this is made clearer by *Bâlambhaṭṭa* (p. 182 ll. 22-23) & *Subodhini* (p. 61 l. 26.) "From the entire estate, a half of what would be regarded as his share *i. e.* one half of the amount allotted to a legitimate issue.

even a half, much remote (is the chance of his claiming) the whole. But, if he be docile, he receives a bare maintenance. [133–134.]

[COLEBROOKE-CHAPTER II.]

[*Section* I.]

[Right of widow to inherit the estate of one who leaves no male issue.]

(1) That sons, principal and secondary, take the heritage, has been shown. In the absence of them, the order of succession, in the case of all,[1] is next declared.

Yâjñavalkya[2] Verse 135, 136.

(2) The wife, and the daughters also, both parents, brothers[3] likewise, and their[4] sons, gentiles, cognates, a pupil and fellow-students, (135).

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[1] The uses of the word *Daya* have been peculiarly illustrated in this sentence of *Vijñanes'wara*. In the first clause, he observes that it has been shown that sons, principal and the secondary, take the *Dâya* (heritage), meaning thereby, what has been said from the commencement of this chapter to this stage. Then in the following clause he observes, "now follow the order of succession of those who take the *Dâya* (dâyâda) in the absence of those *i. e.* the sons. " This shows how the word *Dâya* has been used both for what a member of a joint family takes by survivorship, as also for what an heir takes by right of inheritance.

This part of the text was referred to in the following cases: *Rahi* **vs.** *Govinda* 1 Bom. 104. *Gandhi Maganlal* vs. *Bai Jadab* 24 Bom. 192=1 Bom. L. R. 580. *Moolji* vs. *Cursandas* 24 Bom.563=2 Bom. L.R. 744. *Suraya* vs. *Lakshminarasamma* 5 Mad. 291. *Nachiappa* vs. *Chinnagasami* 29 Mad. 453. *Chinnasami Pillai* vs. *Kunju Pillai* 35 Mad. 152.

[2] Note the following, cases among many, in which this passage was referred to.

Sakharam vs. *Sitabai* 3 Bom. at 360. *Khodabhai* vs. *Bahdhar Dala* 6 Bom. 541. *Moolji* vs. *Cursandas* 24 Bom. at p. 568. *Rutcheputty Dutt Jha* vs. *Rajundar Narain* 2 M. I. A. 132.

[3] The word 'brothers' is interpreted in Bâlambhaṭṭi as including both brothers and sisters. Moreover the word brother has been interpreted to have been used for brothers of the whole as well as of the half blood. See *Muthisami* vs. *Muttukumarsami* 16 Mad. at p. 25.

[4] The expression (तत्सुत) their sons has been interpreted in *Bâlambhaṭṭi* as including 'daughters' of brothers also and there is an elaborate note as to the right of daughters (see Balambhaṭṭi p. 207.)

On failure of the prior among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all classes[1] (136).

Mitâksharâ:—(**3**) He who has no son, of any, among the twelve descriptions above stated[2] is *one having no male issue* (**aputraḥ**). Of such a man *having no male progeny* (**aputrasya**),[3] and of one *who has departed for heaven* (**swaryâtasya**) *i. e.* who has departed for another world, *the heir* (**dhanabhâk**) or successor, is that person, *among such* (**Eshâm**) as have been here enumerated *viz.*, the wife and the rest, *who is next in order* (**Uttara Uttaraḥ**) *on failure of the first mentioned* (**Pûrvasya-abhâve**) respectively. Such is the connection (of words in this sentence.) (**4**) *This rule* (**ayam vidhiḥ**[4]) about the taking of heritage or the order of succession, must be understood *as extending to all tribes* (**sarveshu varṇeshu**) whether the *Murdhâvsikta* and others in the direct series of classes, or *Sûta* and the rest in the inverse order, and as comprehending the several classes, the Brâhmaṇas and the rest.

(4) The wife.

(**5**) Among these, first, the wife takes the estate. *Wife* (**Patni**) signifies a woman espoused by the performance of the nuptial rites; conformably with the etymology[1] of the term as implying a connexion with religious rites; moreover, the singular number has been used with a view to include the wives of all castes. And, hence, if there are many, and these of the same and also of different tribes, they take after dividing the estate according to their respective shares.

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[1] Both *Balambhaṭṭa* and *Vishvesvarabhaṭṭa* observe that the word *all* (sarva) is not to be taken as adjective of the word classes, but independently. सर्वशब्दो न वर्णविशेषणं अपि तु स्वतंत्र एव (see Balambhatti pp. 187-188 subodhini p.62.)

[2] *i. e.* in verses (128-132.) above on page 215 above.

[3] The word *son* (putra) is used here in an extended sense. See *Buddha Singh* vs. *sulta singh* 34 All. 670. See Bâlambhaṭṭi p. 187 l. 27 " अत्र पुत्रग्रहणं पौत्रप्रपौत्रयोरप्युपलक्षणम्."

[4] The verses 135 and 136 of *Yajñavalkya* given above indicate the general rule of succession to the estate of one who leaves behind him no male issue. *Vijñanes'wara* first explains generally all the words in these verses. After that, he takes the case of each claimant, and after examining other texts for and against the right of inheritance in each case, deduces a conclusion which is to be accepted as *his*. The division by Mr. Colebrooke of this portion of the *Mitâksharâ* into several sections has been from this point of view. Thus §§. 5-39 of sect I. (pages 91-95) cover the discussion as to the right of a wife, (*patni.*)

Sect. II. of the daughter & daughter's son.
III. The Parents.
IV. The Brothers.
V. The Gotrajas.
VI. The Bandhus.
VII. The Ulterior heirs.

(6) **Vriddha-Manu** also declares the widow's right to the whole estate: "The widow[2] of a childless man, keeping unsullied her husband's "bed, and persevering in religious observances, shall herself present his "funeral oblation and also obtain his entire share." **Vriddha-Vishnu** also (ordains): "The wealth of him who leaves no male issue, goes to his wife; "on failure of her it devolves on his daughters; in their absence it goes to "the father, (and) failing him it devolves upon the mother." So also **Kâtyâyana**: "A wife succeeds to the wealth of her husband, who is not[3]

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[1] *i. e.* as contained in *Paṇini's* rule (at 4-1-33.) 'पत्युर्नो यज्ञसंयोगे'. "The substitute न् replaces the final इ of पति before the feminine affix(ङीप् ई,) when the word so formed indicates"a wife, who takes part in the sacrifices of her husband." Thus it would appear from a strict interpretation of this rule that if a man has more wives than one, only the eldest or the one who joins with her husband in the performance of sacrifices would be called a *Patni* and not the rest. But it is not so. It is the capacity to take part in a sacrifice, and not actually officiating at it, that determines the title to *Patni*. Moreover, the wife of a Sûdra may never have this title as the husband not being entitled to perform a sacrifice there would be no occasion for the wife to join with him at it. The term, however, is extended to a Sudra also. It would thus appear that the term applies to a lawfully wedded wife as distinguished from a Concubine. Strictly speaking and considered from the Hindu theological point of view, it is only the first marriage, whether of a man or a woman, that is considered as one intended to accomplish the foremost of the four objects of a man's life *i. e.* the *Dharma*, the other three being *Artha*, *Kâma* & *Moksha*. Any other marriage is considered as being for either the *second* or the *third* of these *Purushârthas*. All the same the relation between a man and a woman who have become lawfully wedded would be that of a husband and wife (*Pati* and *patni*.) And so the author of Mitâksharâ adds generally that the union of the two by the performance of nuptial rites establishes between them the relationship of husband and wife. (see also *Balambhaṭṭi* & *Subodhini*) see also observations in *Brindavana* vs. *Radhamani* 12 mad. 72–76 &c.

He also adds, that the singular number is used to indicate the group of heirs indicated by the collective term *Patni*, so that if there are many wives or wives from different castes, all take as wives but the share of each is to be determined by the caste to which she belongs.

This portion is not found in Colebrooke's translation probably because his copy did not contain the reading found here.

[2] See *Ponnappa* vs. *Pappuvayyangar* 4 Mad. at p. 31. & *Vedammal* vs. *Vedanayangar* 31 Mad. 100.

[3] Colebrooke translates, "provided she be chaste."

This also includes by implication the other condition that she should not be opposed to the husband (see Balambhaṭṭi p. 189 l. 13.)

"unfaithful, and failing her, the daughter (inherits) if unmarried." And again: "Of a man (who has died) leaving no male issue, the wife born in "an Arya[1] family, or even[2] the daughters, failing her the father, the "mother, the brother[3] and[4] (his[5]) sons are pronounced to be the heirs?" Also **Brihaspsti**: "Let the wife of a deceased man, who left no male "issue, take his share, notwithstanding kinsmen, a father, a mother or a uterine brother be present."

(**7**) Passages, adverse to these[6], likewise occur. Thus **Nãrada**[7] has stated the succession of brothers, though a wife were living, and has directed a bare maintenance to the widows thus: "Among brothers, if "any one die without issue,[8] or enter a religious[9] order, let the rest of the "brothers divide his property excepting the *stridhana* (of his wife.) They "should make provision for the maintenance of his wives till their death, "provided they preserve unsullied the bed of their lord. They may, "however, cut it[10] off in the case of those who behave otherwise[11]." That the estate of a sonless man goes to the father or the brother has also been shown by **Manu**:[1] "Of him, who leaves no son, the father shall take the "inheritance,or the brothers". He has likewise shown[2] the mother's right to succession, as well as the paternal grandmother's thus: "Of a son dying "childless, the mother shall take the estate, and if the mother also be dead, "the father's mother shall take the heritage." **S'ankha** also has declared the right of succession in order (of succession) of the brothers, the father, and also of the eldest wife thus: "The wealth of a man who departs for "heaven, leaving no male issue, goes to his brothers; failing them his parents "may take it, or his eldest wife." **Kâtyâyana** also has said: "If a man die while separate, and there "are no sons, let the father take his property, or the brother, the mother "or the mother of his father successively."

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[1] As opposed to one born in a *non-Aryan* family. Bâlambhaṭṭi (p. 189. l. 15) also observes that "birth in an Arya family" does not mean mere birth, but it means birth in a good family when the marriage was in the Anuloma form. It is to be noticed that both *Vijñânes'vara* and *Bâlambhaṭṭa* admit by implication that wives from other castes were also entitled to be called *Patnis*. Colebrooke translates आर्यकुलजा as "of honest family."

[2] By the use of the word (*Api*) "even" daughter's sons are also included (Balambhaṭṭi p. 189.)

[3] The word "brother" also includes the sisters (Bâlambhaṭṭi p. 189.)

[4] The addition of (*Cha*) 'and' brings in (their) daughters also. (Bâlambhatta.).

[5] (His) sons. There is no word in the text corresponding to 'his' in the translation. But the context clearly shows that the sons mentioned here are the sons of brothers and that is also supported by a well-known rule of grammar.

[6] There *i. e.* the passages cited above (*Subodhini*) Colebrooke tr. "adverse to the widow's claim."

[7] Ch. XIII. l. 25-26.

[8] *i. e.* without male issue. Bâlambhaṭṭi.

[9] The Sanskrit word is *pravrajet i. e.* become a *Sanyâsi* and thus enter the fourth and last of the orders *viz.* ब्रह्मचर्य, गार्हस्थ्य, वानप्रस्थ and संन्यास.

[10] आच्छिन्द्युः (Achchindyuḥ) *i. e.* should either not allow if the wives are unchaste or put a stop to the allowance after they become unchaste. This passage may be marked in connection with the maintenance of those widows who subsequently become unchaste.

[11] This passage also occurs in the Dâyabhâga XI. 1 p. 48, where the word *Stri* has been used in reference to "women who were actually espoused, but had not the rank of wives." while Vijñânes'vara uses it pointedly with reference to *wives* using the word *patni*. See *Ponnappa* vs. *Pappuvayyangar* 4 Mad. at p. 32; *Gangu* vs. *Chandrabhagabai* 32 Bom. at p. 288; *Lâllubhai* vs. *Cassibai* 5 Bom. 122; *Savitribai* vs. *Luxmibai* 2 Bom. 612 89: *Subramaniya Pandya Chokka Talavur* vs. *Siva Subramanya Pillai* 17 Mad. 300.

* PAGE 22.

(8) An adjustment[3] of these and other[4] contradictory texts has been drawn out by **Dhâres'wara**: The texts[5] which lay down the rule that 'a wife shall take (the estate)' have reference to the widow of a separated brother; and that also provided she be solicitous of authority for raising up issue to her husband[6].

Whence[7] is it inferred, that a widow succeeds to the estate provided she seek permission for raising up issue, but not if she remained alone by[1] herself? From the text[2] (above cited) *viz:* "Of him, who leaves no son, the father shall take the inheritance" and other similar[3] passages. For here a rule of adjustment and a reason for it must be stated[4] but no other rule of adjustment or reason exists. And also on the authority of the text of **Gautama:**[5] "Let relations connected by *pinda*[6], by family[7] "name or by descent[8] from a common patriarch, or the wife, share the

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[1] Ch IX. 185.

[2] Ch IX. 217.

[3] This is in accordance with the general rule that when there occur passages which are of equal weight but which are contradictory the application must be adjusted as otherwise the rule of option might follow. तुल्यबलविरोधे तु विकल्पः See note on विषयव्यवस्था & विकल्प (on p. 35 n. 4 ante.)

[4] *i. e.* the texts cited obove and those next following *viz. Gautama, Manu, Vasistha, Nârada* & Yâjñavalkya.

[5] *i. e.* of *Vriddha-Manu, Brihadvishnu, Kâtyâyana* and *Brihaspati* cited above pp. 229-230.

[6] *Niyoga* means raising up an issue to the deceased husband by appointment see Yajn. II. 127 above & notes (p. 211 l. 2-4).

[7] This is the doubt raised by *Dhâresvara* the solution of which is given immediately by him. Dhâresvara's view is "that a widow is entitled to inherit her husband's "property only when she obtains authority to have male issue raised up to her "husband by means of *Niyoga* (levirate); that if she obtains no such authority, she "cannot inherit but is merely entitled to maintenance; and for this *Dhâres'vara* relies on "the above quoted text of Nârada and also that if Yâjñavalkya (II. 142). Vijnânesvara combats this view and shows further on that *Dhâres'vara* has misapplied these texts. See observations of Chandavarkar J. in *Gangu* vs : *Chandrabhagabai* 32 Bom. 275 at p. 289 sgg.

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[1] *Na swatantrayâ* "and not if she remain independent". Colebrooke translates "but not independently of this consideration." But the word *Swatantra* qualifies the widow (see Bâlambhaṭṭi & Subodhini.)

[2] *i. e.* of *Manu* Ch IX 185.

[3] *i. e.* of *Nârada* &c. "from...passages" *i. e.* on account of the contradiction appearing in these texts.

[4] Colebrooke "Sought."

[5] Ch. XXVIII 21-22. *Dhâresvara* does not properly quote the text of *Goutama* nor has he properly interpreted it. The text properly reads thus: "पिण्डगोत्रर्षिसबन्धा रिक्थं भजेरन् स्त्री वाऽनपत्यस्य (21) बीजं वा लिप्सेत (22)." There are two *Sûtras* combined here. Sutra No. 21 says "Let kinsmen related by pinda &c. take the heritage, or the widow of one dying without issue. Then Sútra (22) says "Or she may seek to raise up issue to him." But what *Dhareswara* does is that he stops after the classes of kinsmen &c. And begins with the 'widow' and joins that portion of this *Sutra* to the next, converting the whole into a conditional clause. *Vijñaneswara* has interpreted *Goutama's* text properly further on while he is refuting *Dhâresvara's* position.

[6] Colebrooke translates pinda "allied by the funeral oblation." This translation may be in accordance with the view prevailing in Bengal under the school of Jimuta Vâhana. But the *Mitâksharâ* view of a *Sapinda* is quite clearly & distinctly mentioned by *Vijñaneswara* in his Commentary on Yâjnavalkya I. 52 beginning with समानः पिण्ड एकः यस्याः सा &c. (Collections Mitâksharâ p. 12 l. 21-22.) The translation of which will be found in the judgment of West J. in *Lallumbhai* vs. *Mankuvar bai* 2 Bom.388 at p. 423, and the translation would be. "connected by particles of blood" under Mitâksharâ or "connected by funeral oblations" under Dâyabhâga.

[7] *Gotra* is the general family name of the original *Rishi.*

[8] *Pravaras.* The most remote ancestors. They are the patriarchs nearer in degree than the originator of the *Gotra,* and on account of whom a connection is established between persons having the same gotra. Each *Gotra* has at least two or three *Pravaras,* and persons belonging to different Gotras may not be regarded as absolutely unconnected if they have any of the *Pravaras* in common among themselves *e. g.* of two men one belonging respectively one to the Jamadagni (जमदग्नि) and the other to the Gotama (गौतम), the gotras are different, and as such they are not connected. But, the Pravaras of Jamadagni are, Jamadagni, Aurva and **Vasistha** & those of Gotama are Gotama, **Vasistha** and Bârhaspatya; thus these two persons have one pravara originally Common *i. e.* although they are not connected by referrnce to the प्रवर्तकमुनि or the ancestor who started the particular family of each, still they are connected by reference to the Rishis next in descent. They have been defined as 'गोत्रप्रवर्तकमुनिव्यावर्तको मुनिगणः,' see the commentary *Balambhaṭṭi* on Yajñavalkya I. 52-53 and Mitâksharâ thereon. (Collections vol. V. pp. 177-190.)

"heritage; or the widow of a childless man may seek (to raise up) offspring "(to him)." (**9**) The meaning of this (text) is this: 'Persons connected by *pinḍa*, by family name or by descent from a common patriarch, share the effects of one leaving no male issue ; or his widow takes the estate, provided she seek progeny'. (**10**) **Manu**[1] also : " He who takes care of his "deceased brother's estate, and[2] his widow, shall, after raising up a son for "his brother, deliver that property even to that (son)[3]". By this text he indicates this : that even when a brother who was separate in estate dies, his wife's claim to his estate is only through[4] an issue, and not otherwise. So in the case of undivided property likewise (the same author[5] says): " should a younger brother have begotten a son on the wife of the elder "brother, the division must then be made equally: thus is the law settled."[6] (**11**) **Vasistha**[7] also by the text : " An appointment shall not be made "through covetousness for the estate " forbidding an appointment to raise up issue to the husband if sought through covetousness for the estate, thereby intimates that the widow's claim to the estate is only through an appointment, and not otherwise. (**12**) In the absence of an appointment, however, a widow is only entitled to a bare maintenance, *vide* the text[8] of **Nârada** : " They should make provision for the maintenance "of their wives till their death." (**13**) The same, it is pretended,[9] will

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The *Gotra* indicates the *Ṛishi* who starts the family, while the *Ṛishis* born in the same family later on, and nearer in degree but of less importance than the originator of the family are indicated by the *Pravaras*–note the following remark of *Medhâtithi* on *Manu* Ch. III. 5. p. 194 ll. 7–8 "ऋषिर्वसिष्ठादिराद्यो वंशस्य कर्ता । तद्गोत्रास्ततः प्रसूताः प्रवरा इति । तत्पुत्रपौत्रास्तपोविद्याद्यतिशयगुणयोगेन प्रख्याततमाः"

Tr, " A *Rishi* such as Vasistha and the like is the maker of the family. Persons born from him and having the same *Gotra*, such as his sons and grandsons, and most renowned by their possessing the highest qualification of austerities and learning are known as *Pravaras.* "

[1] Ch. IX—146.

[2] *Cha* (च) is found in the text of *Manu*, and it seems was also the reading in the copy adopted by Mr. Colebrooke. It is a better reading than *wâ* (वा)–'or'. *Kulluka* in his gloss on this verse adds that this text has a reference to the estate of a separated brother as the one in IX. 120 obviously contemplates a joint estate. (see also *Subodhini* p. 62. l.25 & Bâlambhaṭṭi p. 190. l. 31).

[3] *i. e.* the son so begotten.

[4] 'Through'-*Dwârâ* (द्वारा) i. e. she has no independent right in herself.

[5] *i. e.* Manu Ch. IX. 120. (see note above).

[6] *i. e.* the objector says that even *Manu* has laid down the adjustment of the conflicting texts.

[7] Ch. XVII.-65.

[8] Ch. XIII. 26. (see above p. 230 l. 12-14).

[9] *Kila*—This particle is used in many senses. Here it indicates disapprobation.

The same sense is maintained in the next quotation of an unnamed writer whom *Vijñânes'vara* refers to as *Ke'nâpi* (केनापि)—which the author of the *Subodhini* notes as 'an indication of disrespect'; (p. 62. l. 29. also Bâlambhaṭṭi p. 191. l. 8).

be declared later on by the Lord of the Yogis[1]: "And their childless "wives, conducting themselves aright, must be supported; but such as "are unchaste should be expelled, and so, indeed, those who are perverse." **(14)** Moreover, since the wealth of a regenerate man is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites: accordingly it has been declared by some[2] author: "wealth was produced for the sake of solemn sacri-"fice; and they, who are incompetent for the celebration of these (rites), are "not entitled to any property[3], but (may) receive food and raiment. Wealth "has been ordained for sacrifices. Therefore it should be allotted to places "concerned with religious duties and not to women, fools or the irreligious."

(15) [4] That is wrong; for authority to raise up issue to the husband is neither specified in the[5] text; "The wife, the daughter &c." nor is it suggested by the premises[6]. Besides, it may be here asked, is the appointment to raise up issue a reason for the widow's succession to the property, or is the issue borne by her, the cause of her succession? Of these, if the appointment alone be the reason, it would follow that, even without having borne a son, she has a right to the estate; and the right of the son (thus[7]) born to the estate would not follow. On the other hand if the offspring alone be the cause (of her claim), then in that case as the son alone has a right to the estate, the law (of inheritance) should not be stated beginning with "the wife &c."

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[1] *i. e.* Yâjñavalkya. II. 142.

[2] Name unknown. see note above. *Bálambhaṭṭa* remarks that by the use of the expression *Kenápi*, disrespect for the writer is indicated; and it should be noted that therefore the name of the writer has not been mentioned. (p. 191. l. 13).

[3] The word in the text is *Riktha* which means heritage, or inheritance.

[4] Here ends the summary of *Dhârêṣvara's* argument; *Vijñánes'vara's* refutation of it commences from "That is wrong". He does it in several ways, taking each text and explaining its meaning until he arrives at the conclusion at the end of his argument *viz.* "Of a man dying without issue separate and un-reunited, his married wife, leading a continent life, takes the whole estate" (see further on page 240 ll: 13–15).

For a lucid analysis of the whole position see *Subodhini* (p. 62 ll, 9–18).—"Indeed for the succession of a wife to her husband's estate, is the appointment the cause, or, the issue begotten thereby, or is it a special reason, and again of the special reason, is appointment the principal cause or the issue, or are both of equal importance—these are the six ways in which this question may be looked at. &c."

See the observations of Muttuswamy Aiyyar J. in *Mari vs. Chinnammal* 8 Mad. at pages 118–127. and also *Krishna* vs. *Sami* 9 Mad at p. 74 &c.

[5] *i.* e. of Yâjñavalkya II. 135 (p. 227 l. 11–12 above).

[6] *i. e.* Nor is it pertinent or relevant.

[7] Colebrooke translates "subsequently produced: but the expression in the text is *Utpannasya* which would mean "born." Having regard to the context, there would be much difference in meaning in the two interpretations. As the assumption would concede to the widow the right of succession on the ground of appointment, she must be one who has already taken a step in the matter of the appointment, and who would be anticipating the birth of the issue.

Another objection and Answer.

(**16**) But it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong; for it is incosistent with the following[1] and other similar texts, *viz.* "What was given before the "nuptial fire, what was presented in the bridal procession, what was given "in token of affection, what was received by the woman from her brother, "her mother, or her father, are denominated the sixfold 'property of a "woman;" (**17**) Moreover, on failure of sons of all descriptions, the law (of succession) has been stated commencing with "the wife, daughters &c." Now here, by affirming the right of a widow, who[2] has been appointed to raise issue, the right of the kshetraja son himself to succeed to the estate is virtually affirmed. But that had already been declared[3]: and therefore the wife ought not to be mentioned in the law of succession to (the estate of) one who leaves no male issue.

The interpretation of Gautam's text examined and proved to be erroneous.

(**18**) But, it is alleged, the right of the widow, who is authorized to raise up issue to her husband, is deduced from the text of **Gautama**[4]: "Of a childless man, let kinsmen, "connected by *piṇḍa*[5], by family name, or by descent from "the same patriarch share the heritage; or the widow; or "she may seek to raise up offspring (to him)." This too is erroneous; for it cannot be inferred as the meaning of this (text) that, "if she seek to obtain offspring, she may take the goods of a childless man", but that, "persons connected by *piṇḍa*, by family name, or by descent from the same patriarch, share the effects of one who leaves no issue; or his widow takes the estate and she may either seek to obtain progeny, or may remain chaste.[6]" This is only[7] an alternative course proposed to (be adopted or not by) her. For the particle (*vâ*) 'or' denoting an alternative course, does not convey the sense of ' if ' (*yadi*). Moreover it is fit, that a chaste wife alone should succeed to the estate and not one who has sought appointment, as she has been censured by the law as well as by (the opinion of) the people. The successsion of a chaste woman alone has been expressed in the text[1]: " The widow of a childless man "keeping unsullied her husband's bed, and persevering "in religious observances, shall herself present his funeral oblation, and "also obtain his entire share."

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[1] Manu Ch. IX. 194.

[2] In the original, the expression has been used as qualifying the widow-a sort of condition precedent to her succession appears to have been laid down. It means—"by declaring the right of succession of a widow on the ground of her appointment &c."

[3] The right of succession of sons of all sorts has been independently treated in a separate place and in that connection the right of succession of the *Kshetraja* son also has been examined (see p. 211 &c. above). It would therefore be inconsistent to suppose that the author wanted to treat the right of that son again here. (See Bâlambhaṭṭi 191-192 and *Subodhini* 92.)

[4] Ch. XXVIII. 21-22. note above p. 232 l. n. 6 see *Vedammal* vs. *Vedanayaga Mudaliar* 31 mad. 100 at 106 p. *Ganpat* vs. *Tulsiram* 36 Bom. 88-90=13 Bom. L. R. at 862.

[5] See note above on this at p. 232.

[6] संयता—continent, leading a strictly chaste life.

[7] *i. e.* two modes of conduct are suggested to her. She may either seek male issue by means of appointment or she may remain chaste (see Bâlambhaṭṭi p. 192 l. 30; Subodhini p. 64 ll. 5-7.). Colebrooke translates, "This is an instruction to her &c.",

*Page 93.

A continent wife preferred.

And an (authority to raise up issue by) appointment has been condemned by **Manu** by the following[2]: " By regenerate "men a widow must not be authorized to (conceive by) any "other (than her husband); for they who authorize her to (conceive by) another, violate the enternal law." and similar other texts.

Niyoga condemned

(**19**) As for the text of **Vasistha**[3]: "An appointment shall not be "made through covetousness for the estate," it must be interpreted to mean that ' if the husband die unseparated from his co-parceners or re-united with 'them, she has no right of succession to the estate; and therefore an ap'pointment to raise up issue must not be resorted to for the sake of securing 'the succession to her offspring.' (**20**) As for text of **Nârada**[4] "And they "shall allow maintenance for his women till the end ot their lives, " since in the text[5], "The shares of re-united brethren are considered to be "exclusively theirs." the re-union of co-parceners had been premised, that too[6] must be understood to assign only a maintenance for the childless women of these[7]. Nor is tautology to be objected to the text:[8] "The share of re-united brethren &c." on the ground that the previous passage[9] *viz.* "Among brothers, if any one die without issue &c." (already) had a reference to re-united members. For, by this explanation of what had been said before, women's separate property is exempted from partition, and a mere maintenance for their[1] widows is at the same time ordained. (**21**) As for the passage[2] "And the childless wives of these &c." that will be explained[2] (further on) as having a reference to the wife of an impotent man and such others. (**22**) As for the argument, that the wealth of a regenerate man is designed for a sacrifice[3] and women not being competent to the performance of sacrifice, their succession to the property is unfit, that is wrong. For if every thing which is wealth be intended for sacrificial purposes, then charitable purposes, burnt offerings, and similar matters, must remain unaccomplished. Or again, if it be alleged that since sacrifice here signifies religious[4] duty in general, and charitable donations, burnt offerings and the rest are acts

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[1] of *Vridha-Manu* see p. 229 ll. 6-10 above.

[2] Ch. IX. 64.

[3] Ch XVII. 65.

[4] Ch. XIII. 26.

[5] of Narada Ch. XIII. 24.

[6] *i. e.* the text of Narada in Ch. XIII. 26.

[7] *i. e.* of the re-united co-parceners.

[8] of Nârada Ch. XIII. 24. see note below. The two passages are not tautologous; because while the first declares that the *Stridhana* property of women should be exempted from partition, the second lays down a clearly separate rule whereby provision for the maintenance of the women of such a member is made. There would therefore be no fault of tautology. (see Bâlambhaṭṭa P. 194 l. 10 and Subodhini P. 94 ll. 12 and 13.)

[9] Nârada XIII. 25. The full texts are as follows;—

"संसृष्टानां तु यो भागस्तेषामेव स इष्यते " 24.

"भ्रातृणामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेत्तु वा । विभजेरन्धनं तस्य शेषास्तु स्त्रीधनं विना॥" 25

"भरणं चास्य कुर्वीरन्स्त्रीणामा जीवनक्षयात् । रक्षन्ति शय्यां भर्तुश्चेदाच्छिन्द्युरितरासु च॥"26

Tr. "That portion which belonged to re-united coparceners is declared to be absolutely theirs." 24.

" If among several brothers one should die childless, or become a religious ascetic, the others shall divide his property, excepting the *Stridhana.*" (25).

" They shall make provision for his women till they die, in case they remain faithful to the bed of their husband. Should the women not (remain chaste), they must cut off that allowance " 26. [Sacred Books of the East Vol. XXXIII. Pages 195–196].

See *Ponnappa vs. Pappuvayyangar* 4 Mad. at pp. 31 and 32, and *Subramanya Pandya vs. Siva Sabramanya Pillai* 17 Mad at pp. 326—327 where, referring to this and other passages the court deduces the right of survivorship by which under the Mitâksharâ the surviving members of a joint family become entitled to an estate which would have become the absolute property of the deceased member, had a partition been made during his life-time.

It may be noted that the *Dâyabhâga* does not interpret the term "woman" used in this passage as indicating a wife but women actually espoused, but not having the rank of a wife. see Dâyabnâga ch. XI. sect. I p. 48 also 4 Mad at p. 32. A distinction among wives by marriage *e. g.* महिषी, भोगपत्नी &c. will be found to have been refered to in *Ramasami vs. Sundaralingasami* 17 Mad. 422 at p. 437 and *Brindavana vs. Radhamani* 12 Mad. 72

[1] *i. e.* of the male mambers of the family.

[2] Yâjñavalkya II. 142.

[3] Colebrooke translates "for religious uses"; but the word in the original is (यज्ञ) *Yajñya*, and in the discussion which immediately follows in the Mitâksharâ the author has used this word in coutradistinction from religious purposes generally.

[4] *i. e.* The word sacrifice includes by implication all religious purposes in general. उपलक्षण is that which implies something which has not been actually expressed, implication of something in addition, or any similar object where only one is mentioned "स्वप्रतिपादकत्वे सति स्वेतरप्रतिपादकत्वम्".

The three words (यज्ञ, दान and होम) *Yájñya* or *Yâga* (sacrifice), *Dâna* (donation) and *Homa* (burnt offering) are explained in (Subodhini p.64.) thus:—The relinquishment of a thing in favour of a deity is a *Yâga* or consecration, the same object terminating with an offering in the fire is a *homa*. Bâlambhaṭṭa adds a further techmial distinction—when the offering is with the accompaniment of वषट् it is *Yâga*; without it, it is a simple *Hóma*. And a *Dâna* or 'donation', or gift, is that by which the proprietary right is created in another by terminating one's own right of property in the thing transferred, of religious duty, the applicableness of wealth to those uses is uncontradicted; thus then the other[1] two objects of life *viz.* *Artha and Kâmâ* which (also) are to be secured by wealth would remain unaccomplished; and in that case there would be an inconsistency in the following passages of **Yâjñavalkya, Gautama** and **Manu** *viz*, "One[2] should not neglect "religious duty, wealth or pleasure (such as he can accomplish) according to "his capacity;" so[3], "To the utmost of his power, a man should not let "morning, noon or evening be fruitless in respect of religious merit, wealth and pleasure" and also[4] " These (*i.e.* the organs[5] of perception) cannot "effectually be so restrained by abstinence[6]."(**23**) Moreover, if wealth be designed for sacrifices (only), the argument would be reversed, by which it is shown, that the careful preservation of gold under the text[7], " Let gold be preserved," is intended not for religious ends but for human purposes. (**24**), Moreover, if the word sacrifice import religious duty in[1] general, the succession of women to estates is most proper, since they also are competent to the performance of auspicious[2] and conservatory acts. (**25**) As for the last text which declares the dependence of women: " A woman does not[3] deserve independence," let there be dependence, but where is the objection for the acceptance of property ? (**26**) How then are the texts such as[4]: " wealth was produced for the sake of (the performance of) solemn sacrifices" and others to be interpreted ? The answer is that that text is to be interpreted to mean that wealth which was obtained[5] for the (express) purpose of (performing) a sacrifice must be appropriated exclusively to that purpose even by sons and other successors, as it has been declared to be an offence even in the case of sons and other successors, generally[6] in the text[7] "He, who having received articles for a sacrifice, disposes not of "them (for that purpose) shall become a kite or a crow."

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[1] The four objects or purposes of a man's life (पुरुषार्थाः *Purushârthas*) in this world are (1) *Dharma* (धर्म) religious merit, (2) Artha (अर्थ)—attainment of riches or wordly prosperity (3) K*âma* (काम) desire of sensual enjoyment and (4) *Moksha* (मोक्ष) final emancipation or deliverance of the soul from recurring births.

These are the four objects which a man has to accomplish during his life in this world. And the objecter says that if all the wealth were appropriated towards *Dharma* only, the other two *viz.* *Artha* and *Káma* would remain unaccomplished and thus there would be a breach of the supreme duty of attaining all the four objects of life.

[2] Yâjñavalkya Achârâdhyâya 115. The passage in the text of *Yâjnâvalkya* reads differently from the quotation here given by *Vijñánesvara viz.* धर्मार्थकामान्स्वे काले यथाक्रिया Tr. "should not neglect religious duty &c. in their proper season." This is made further clear in the passage of *Gautama* next cited, which has thus been freely translated, "Let him not pass idly (any part of the day, be it) morning, midday, or evening; (but) according to his ability (he shall make each useful) by the acquisition of spiritual merit or of wealth, and by taking his pleasure." And generally, the mornings are prescribed for the first and the last *i. e.* (*Dharma and Moksha*), the midday for the *Artha*, and evenings for the *Kâma*.

[3] *Gautama*. ch. IX. 46

[4] *Manu* ch. II. 96.

[5] These organs are enumerated in Verses 89, 90, 92 of Ch. II. by *Manu*. In Verse 91 ten of these are classified into two groups *viz.* "Organs of sense" (बुद्धीन्द्रियाणि) " and organs of action " (कर्मेन्द्रियाणि) and verse 92 declares mind as " the eleventh organ, which by its quality " belongs to both kinds ". The meaning is, that these organs cannot be so effectually restrained by a course of abstinence as they would be by a sense of satiety generated by enjoying them.

[6] Non-use (असेवया). (see note above).

[7] This is from the 12*th* Topic (*Adhikaraṇa*) of the 4*th* Section (*Pâda*) of the 3*rd* Chapter (*Adhyâya*) of Jaimini. The passage in full from the Veda is as follows:—तस्मात्सुवर्णं हिरण्यं भार्यम् । सुवर्ण एव भवति । दुर्वर्णोऽस्य भ्रातृव्यो भवति । ". This passage enjoins the careful preservation of gold lest it lose its brightness and be tarnished. The question raised on it is, whether the observation of the precept be essential to the efficacy of sacrifice or serve only a human purpose; and the result of the reasoning is that the precept refers to the person and not to a sacrifice. *Vijñánes'vara* says that this demonstrated conclusion' or *Siddhánta* (सिद्धान्त) would be contradicted, if it were assumed that gold is intended only for a sacrifice: (see Subodhini p. p. 65, 66, and Bâlambhaṭṭi p. 195).

The Answer.

(**27**) Even as to what has been said by **Kâtyâyana** " Heirless pro-"perty goes to the king, deducting however a subsistence for the females as "well as for the funeral charges; but the goods belonging to a venerable "priest[8] let him bestow on venerable priests." *i. e.* Heirless property or wealth which is without an heir to suceeed to 'goes to the king' *i. e.* becomes the property of the sovereign 'deducting, however, a subsistence for the females as well as for the funeral charges ' it means that after excluding or setting apart a sufficiency for the food and raiment of the women, and as

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[1] See note above p. 237 n. 3.

[2] इष्टापूर्त &c. see note on p. 195 n. 5 above.

[3] अर्हति. *i. e.* is not fit to be indepentent. See *Nathubhai vs. Javher* 1 Bom. 121 at pp. 123 and 124, as regards the capacity of a woman to hold property and to enter into a contract without the husband's consent or ratification. But it would be otherwise if the property be immovable, or be a property producing a periodical income. see *Bhau vs. Raghunath* 30 Bom. 229 at pages 239–240.

[4] See above p. 234 l. 7–8.

[5] *i. e.* in charity: see Bâlambhatti p. 196. ll. 5. 7. Subodhini p. 96. 6–8.

[6] *i. e.* without particularisation (अविशेषेण).

[7] See *Manu* ch II. 25.

[8] A *S'rotriya* is a learned *Brâhmaṇa.* " One is a *Bráhmaṇa* merely by brith, he is called a *dwija* after the performance of rites, he becomes a *vipra* by learning, and is dasignated a *shrotriya* when he has all the three" " जन्मना ब्राह्मणो ज्ञेयः संस्कारैर्द्विज उच्यते । विद्यया याति विप्रत्वं त्रिभिः श्रोत्रिय उच्यते ॥" It is such a one whose wealth has been unanimously declared to be unfit to be taken by the king.

Bâlambhatta reads as *Shrotriyáyopapâdayet i. e.* " should devote it for the use of " a shrotriya Brâhmaṇa.

much as may be requisite for the funeral charges such as the funeral repasts and other obsequies in honour of the (deceased) owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a 'venerable priest,' duducting, however, "a subsistence for the females as well as the charges of obsequies, 'Let him "bestow on a venerable priest.' "**(28)** But even this relates to women[1] kept in concubinage, for the term employed is "females[2]." The text[3] of **Nârada** likewise relates to women of the harem, since the word used is women[4]. "Except[5] the wealth of a *Brâhmaṇa*. But a king, who is attentive to "the obligations of law[6] should allot a maintenance to the women of such a "person. Thus has been declared the law of inheritance." **(29)** But since the term *patni* is here[7] employed, the succession of a wedded wife, who is chaste, is not inconsistent with those passages. **(30)** Therefore it is established as the right interpretation (of this passage), that when a man who was separated (from his co-heirs) and not re-united (with them) dies leaving no male issue, his wife takes the eatate in the first instance. For[8] partition had been discussed, and re-union is to be subsequently considered.

(31) It must be understood, that the explanation proposed by **S'rikara** and others restricting (the widow's succession) to a small portion of property is refuted by this[9]: For even where there are legitimate sons it is provided, whether the partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the son's. "If[10] he make the allotments equal, his wives must be made "partakers 'of equal portions'." And again "Of[11] heirs dividing after (the "death of) the father, let the mother also take an equal share." Such being

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[1] See further on Yajñ. II. 290. and the *Mitákshará* thereon.

[2] The word is *Yoshit.* which is derived from जुष् to serve.

[3] Ch. XIII. 52.

[4] The word is *Stri.* It is derived as स्त्यायति गर्भोऽस्याम्. The text of Nârada refers to women generally.

[5] The last portion of verse 54 is "In default of all, that (wealth) goes to the king". and V. 55 begins with the exception to this last clause.

[6] धर्मपरायण, -*i. e.* intent on following the dictates of *Dharma.*

[7] Here *i. e.* in Yâjn. II. 135.see p. 227 l. 11 abvoe.

[8] What the author means is this: that the widow succeeds to all description of property, exccpt those which form the subject of partition in verses 114-126 above, and also those which form the subject of re-union in verses 138 and 139. *Jasoda Koer vs. Sheo Pershad Singh.* 17 Cal 33 at p. 36.

[9] *i. e.* by the argument which follows:—See Bâlambhaṭṭi p. 197. l. 15 and Subodhini p. 66 ll. 25 etc,

[10] Yâjñavalkya II. 115 p. 184. ll. 9-11.

[11] Yâjñavalkya II. 123, p. 203. ll. 2-3

the case it is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue[1].

An objection and answer.

(**32**) But it is argued that under the terms of the texts (above cited): "his wives must be made partakers of equal portions" and "Let the mother also take an equal share" a woman takes only as much wealth as is sufficient for her maintenance. That is wrong. For the words "*ans'a*" (share or portion) and "sama" (equal) would thereby be deemed meaningless.

(**33**) Or again it may be argued that if the wealth be great, she takes precisely enough for her subsistence, but if small, she takes a share equal to that of a son : That too would be wrong ; for variableness[2] in the precept will be the consequence. Since if the estate be considerable the texts (above cited) "his wives must be made partakers of equal portions" and "let the mother also take an equal share" would be construed, regard being had to another text[3] also which lays down a bare maintenance, to suggest a share adopted for a bare support. But if the estate be inconsiderable, the same passage would (have to be construed to) indicate the assignment of a share equal to a son's.

An objection.

(**34**) Thus, in the instance of the *Châturmâsya*[4] sacrifices, in the disquisition (of the *Mìmânsâ*) on the passage '*Dwayoḥ praṇayanti*, where it is maintained by the opponent that the rules for the preparation of the sacrificial fire at the *Soma-Yâga* extend[5] to these sacrifices, and as a consequence of it, the injunction "not to construct a Northern Altar (*Uttara Vedi*) at the *Vaisvadeva* sacrifice nor at the *S'unâsiriya* sacrifice, must be understood as a pro-

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[1] For a lucid explanation of this passage see Subodhini p. 66 lines 25 to 32 and p. 67, ll 1–2 and Bâlambhaṭṭi p. 197.

[2] It is a rule that "a single sentence once uttered carries only one meaning" " सकृदुच्चरितः शब्दः सकृदेवार्थमवगमयति, " and if the texts cited above were to be interpreted to have one meaning in case where the estate is large, and quite another meaning where the estate is small, that would be contrary to the universal rule of interpretation stated above (See Subodhini p. 97 ll. 5–10. Bâlambhaṭṭi p. 197 ll. 26–30.)

[3] *Viz.* Nârada Ch. XIV. 26. "And should provide for the maintenance of his women till their death. " (See p. 236 l. 21 above) ' भरणं चास्य कुर्वीरन्स्त्रीणामाजीवनक्षयात् ' (Subodhini p. 67–l. 9. Bâlambhaṭṭi p. 197 l. 29).

[4] *Châturmâsya* is the name of the sacrifice performed every four months *viz*: at the beginning of *Kârtika*, *Fâlguna, and A'shâdha.* It consists of four parts in order *viz:* (1) The *Vais'vadeva*, (2) the *Varuṇa–Praghâsa*, (3) the *Sâkamedha* and (4) the *S'unâsiriya.*

[5] An *Atides'a* (अतिदेश) is an extended application, or an application by analogy. The argument here is that the general practice prevailing at the *Soma–yâga* may, by analogy be applied here.

The answer.

An objection again.

Final conclusion.

hibition of such altar[1] ; but it is answered by an advocate[2] of the right opinion, that it is not a prohibition of that altar at the first and the last parts as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the *Soma-yâga*, but an exception to the express rule "prepare an *Uttara-vedi* at this sacrifice,[3] "bringing in the construction of *the Uttara-vedi*, it is urged in reply by the opponent, that (even then) variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the (four) periods of sacrifice, and commands a construction of it at the two middle periods, independently[4] of any other maxim. But it is finally shown as the right doctrine, for the purpose of obviating[5] the objection of 'variableness in the precept,' that the prohibition of the northern altar at the first and last of the periods of sacrifice is a *Nityânuwâda*, and that regarding the injunction " *Dwayoḥ*[6] *praṇayanti*" as an *Arthawâda*[7], the injunction " prepare the *Uttaravedi* at this sacrifice." commands the construction of the northern altar at the two middle periods only *viz.* the *Varuṇapraghâsa* and *Sâkamedha.*

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[1] *i. e.* the Northern altar.

[2] Mark the expression. It is the position of the follower or apologist of the right opinion, and not the right opinion itself, which is given at the end of the discussion.

[3] *Pratishedha*-a prohibition, a cutting down, delimitation.

[4] *i. e.* without reference to any particular maxim, but quite by a reasoning on general principles.

[5] Mark the word *bhayât*—apprehension. It is such niceties very critically conceived and expressed which demonstrate the high position of *Vijnân'es'vara.* Even the remote opprehension of a variableness in the precept is to be avoided, and for this, any other minor blemish may be accepted.

[6] अनुवाद an explanatory repetition of, or reference to, what is already mentioned; a supplementary repetition as distinguished from an injunction or *vidhi.*

अर्थवाद is a declaratory assertion, whose purport is either praise or blame (प्राशस्त्यनिन्दान्यतरपदं अर्थवादः). *Arthavâda* passages are of two kinds, being either complements of *Vidhi* passages, or complements of *N'ishedha* passages. It is again of three kinds *viz: Guṇavâda, Anuvâda* and *Bhûtârthavâda.*

" विरोधे गुणवादः स्यादनुवादोऽवधारिते । भूतार्थवादस्तद्धानादर्थवादस्त्रिधा मतः ॥ "

[7] The above discussion is based on what is known as the " *Dwayoḥ-praṇayanti* " Maxim of the Mimânsa. For a lucid exposition of the passage in the text of the Maxim and its bearing on the text, see Subodhini pp. 67–68 and Bâlambhaṭṭi, which, as usual, elaborates the points in the Subodhini. The following, in short, is the summary of the discussion.

General remarks : The two sacrifices referred to in this discussion are the *Sôma yâga* and the *Châturmâsya.* The *Châturmâsya* sacrifice has been explained in note 4 on page 241 above. The principal sacrifices are the Soma, the *Dars'a–Purṇamâsa* and the *Agnihotra*–These are known as the *Prakṛitis* (प्रकृति) or Principal Sacrifices. The *Châturmâsya* is a 'special sacrifice' and falls under the *Dars'a Purṇamâsa.* Such a one is called a *Vikṛiti* (विकृति) or 'a special rite.' *Praṇayanam* is the carrying of the fire from the *Gârhapatya* altar to the *Âhavanîya.*

Lastly, the construction of the 'Northern altar' has been ordained in the *Sóma* Sacrifice only, and not in the *Dars'a Pûrṇamâsa* sacrifice.

These are some of the general rules of practice ordained at the sacrifices.

Then there are the following texts of the *Veda*, in reference to the *Châturmâsya* sacrifice, viz.,

(१) उपात्र वपन्ति '*Upa atra vapanti,*' Tr. "In this (*i. e.* the *Châturmâsya* sacrifice) the Northern altar is to be established."

(२) न वैश्वदेवे उत्तरवेदिमुपाकिरन्ति न शुनासीरिये—'*Na Vais'vadevê uttaravedimupakirantî na S'unâsîrîye*' Tr. "The Northern Altar is not to be established either in the *Vais'wadeva*, or in the *S'unâsîriya* portion."

(३) उरू व एतौ यज्ञस्य यद्वरुणप्रघासः शाकमेधश्चेति द्वयोः प्रणयन्ति—"*Urû wâ etau Yâjnâsya yat Varuṇa-Praghâsaḥ S'âkamedhascheti Dwayoḥ Praṇayanti.*"

Tr. "The two legs (*i. e.* Mainstay), of the *yâjña* are the *Varuṇa-Praghâsa* and the *S'akamedha*; the two must have fire kindled in them."

Taking these texts and having regard to the general rules of sacrifice according to which the *Praṇayana* in the case of the *Sóma* alone has been laid down in the *S'ruti*, while there is no provision for the same in the case of the *Dars'a-Purṇamása*, the objector or *Pûrva-Paksha* says that the procedure to be adopted for a *Praṇayana* should be that prescribed for the *Sóma* inasmuch as it is सधर्मक and not the अधर्मक one in the case of the दर्शपूर्णमास.

Of the three texts quoted above, No. 1 lays down that the 'Northern Altar' which is invariably connected with fire-kindling, should be consecrated in the *Châturmâsya Yâga*. This is in the nature of a *general* rule or *Vidhi* which has been cut down by No. 2, according to which the 'Northern Altar' is not to be consecrated either at the first or the fourth quarter of the *Châturmásya* sacrifice viz: in *Vais'vadeva* and *Sûnásiriya.*

No. 3, has some praise for the 2nd and 3rd quarters viz: *Varuṇa-Praghâsa* and *S'akamedha*, and then it says that the fire-kindling should take place in the two (*i. e.* these two). Shortly stated the position is this :

(1) The Northern Altar should be established.

(2) But not in the case of the first or the fourth quarters.

(3) In the 2nd and the 3rd quarters fire should be kindled.

These rules have been construed to yield the following plain result. The first is a "general rule" or a *Sâmânya Vidhi*. The second is an exception to it and the third is a necessary deduction following as the combined result of Nos. (1) and (2). Further, the third is in the nature of an *Arthavâda* showing the reason why the second and third are not subjected to any exception in respect of fire-kindling.

The above construction harmonises the three texts and does not introduce any conflict such as would result in an *option.*

But the opponents argue thus : We concede that the first is a general rule or *Vidhi* and the second is a 'special negative *Vidhi*' by way of an exception. But the exception is as regards the "Northern Altar," and not as to the kindling of fire which may be kindled under the general procedure laid down in the *Sóma* sacrifice, and thus they further contend that the clause *Dwayoḥ Praṇayanti* in No. 3 is to be construed as

Another position based on certain texts.

(**35**) Again as to the doctrine, that from the text of **Manu**:[1] "Of "him who leaves no male issue, the father shall take the "inheritance or the brothers" as well as from that of **Sânkha** " The wealth of a man, who departs for heaven, "leaving no male issue, goes to his brothers; in their absence his parents shall take, or his eldest wife. " the rule is deduced that the wealth of a man leaving no male issue goes to his brothers; and from the text[2] "let them provide for the support of his women for life," it also becomes established that the wife obtains (as much) wealth (as is) sufficient for her maintenance. This being so (it follows that) if a rich man die leaving no male issue, the wife takes as much as is adequate for her subsistence, and the rest the brothers take ; but (that) if the estate be barely enough for the support of the widow, or less than that, then to provide (for the case of) a conflict (which might arise) *viz.* whether the wife alone should take or the brothers also, the text[3] " the wife, the daughters &c. " has been propounded to demonstrate the potentiality of the (claim of the) first (claimant). This opinion too the Revered Teacher[4] does not tolerate. For he interprets the text[5]: " Of him who " leaves no male issue, the father shall take the inheri-

Answer.

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being intended to apply also to the first and the fourth quarters of the sacrifice by the *Vais'wadeva* and the *S'unâsîriya.*

In short, what they maintain is that all that No. 2 lays down is that the 'Northern Altar' should not be established in the case of the *Vais'vadev* and the *S'unasiriya* quarters. This does not prohibit the kindling of the fire, which has been presented quite generally in No. 3. Thus they say, there is a virtual conflict between the texts, there is scope for the rule of option (*Vikalpa*) to prevail, and taking advantage of this, they contend that the northern altar should be constructed in the *Vais'vadeva* and the *S'unasiriya* quarters.

To this the *Râddhântins*, or the upholders of the correct opinion, reply that this method of argument involves the fault of " variableness in the precept " (*Vidhi-Vaishamya*), and cannot therefore be allowed. For, the opponents once construe No. 1 as a " general rule or *Vidhi*, " with No. 2 as an exception. They construe it again as a " general rule, " side by side with No. 2 which they now construe as an absolute rule creating contradiction. They get the fire by the first view and Altar by the second, which is faulty and cannot therefore be allowed.

As stated at the beginning of this note the reader will find a very lucid exposition of this in the short but clear statement in the *Subodhini.*

According to this maxim, it would be wrong to construe a rule in one way in one place, and in quite another way in anothor place.

[1] Ch. IX. 185.

[2] Of Nârada. Ch. XIII. 26.

[3] Of *Yâjñavalkya.* II. 135 See p. 227.

[4] *i. e.* Viśvarûpâchârya. (Subodhini and Bâlambhaṭṭi.)

[5] Of Manu. Ch. IX. 185.

tance, or his brothers" as laying down an option, and not as laying down an order (of succession), but only as indicating the right (of persons) in the matter of inheritance, and that, that text becomes applicable when the group of heirs such as the wife and the rest fail ; and also that the text of **Sânkha** relates to re-united brothers. (**36**) Moreover, it does not appear either from this text or from the context, that it is relative to an inconsiderable estate. If (the concluding portion of the text *viz.*) "on failure of the first among these, the next in order is heir" be restricted to the case of a small property, by reference to another passage, in two instances (*viz: of*) "the widow and the daughters, " but (be understood to) relate to wealth generally in the case of' the father and the rest' the consequent defect of the variableness in the precept referred to above affects this interpretation. So this is[2] a mere trifle. (**37**) As for the text of **Hârîta**: "If a woman, become a "widow in her youth, be ill-behaved[3], maintenance must in that case be given "to her for the support[4] of life", that too is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate; (moreover) from this very passage[4] it is apparent that a widow, not suspected of misconduct has a right to take the whole property. (**38**) And with this same

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[1] *Viz* : " They should provide for their maintenance &c." Nârada. Ch. XIII. 26 See n. above 236 and p. 21.

[2] This remark does not appear in the translation by Mr. Colebrooke.

[3] कर्कशा (*Karkas'a*) Colebrooke translates " head-strong " Mr. Mandlik translates as : " If a woman becoming a widow in her youth, come to be suspected of unchastity &c. (p. 79 ll. 9–10)." Bâlambhaṭṭa renders it as क्रूरा cruel. The English dictionaries translate the word as " Ill-conducted, unchaste, unfaithful " when used in reference to a woman. This sense is also to be found in the following couplet from the lexicon *Vis'va* (विश्व) cited in the *Râmâsrâmi* on *Amarakosha*. (III. 3–217.)

" कर्कशः परुषे क्रूरे कृपणे निर्दये दृढे । इक्षौ साहसिके कासमर्दकाम्पिल्लयोरपि "

It is derived from the two words कर् (कृञ् हिंसायाम्) and कश् (कश् शब्दे)—कर् चासौ कशश्च " He who is aggressive as well as harsh. " The translation given above would thus be appropriate. *Vijñânes'varâ's* explanation of this term is शङ्कितव्यभिचारा "*Suspected* of incontinency " and not " incontinent. " The suspicion being caused by her general behaviour and manners.

In *Savitribai* vs. *Luxmibai* 2 Bom. at p. 606 Westropp. C. J. while considering this text, doubted whether this text applied to maintenance. See also *Valu* vs. *Ganga* 7 Bom. at p. 88.

[4] आयुषः क्षपणार्थं—There is a special meaning in the expression क्षपणार्थम्—क्षपण (*kshapaṇa*) is derived from the word क्षि (to waste). Mark the expression which indicates that the allowance is to be given to her not so much for the support of life, with a view to its extension or prolongation, but it is to be given till the life wears away. The meaning is " Let her have a subsistence, till the sinful life wastes away. "

view, it has been said by **S'ankha**[1] " Or his senior wife." Being senior *i. e.* senior in qualities, and unsuspected of incontinency, she takes the whole wealth ; and like a mother, maintains any other (wife of her husband who is) ill-conducted. Thus all is unexceptionable.

* Page 95.

(**39**) Therefore it has been established that, a wedded wife takes the whole estate of a man, who, being separated (from his co-heirs) and not subsequently re-united (with them) dies leaving no male issue.

[Colebrooke Sect. II]

[Right of the Daughters and Daughter's Sons.]

(**1**) On failure of her, the daughters (inherit). The plural is used in "the daughters" to suggest the equal or unequal participation of daughters alike or dissimilar by class. (**2**) Thus[2] **Kâtyâyana** says: "A wife, takes the estate of her husband, *i. e.* such a one "as does not lead an incontinent life; and in default of her "the daughter, if she be unmarried then." And also **Brihaspati** "The wife "is pronounced successor to the wealth of her husband ; and, in her default, "the daughter. As a son, so does the daughter of a man proceed from his "several limbs. How then should any other person take her father's "wealth ?"

The daughter.

(**3**) Here, however, if there be a competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited, *viz*: " In default of her, the "daughter (takes) if she be unmarried then " (**4**) Moreover, if the competition be between an enriched and unprovided daughter, the unprovided inherits ; and on failure of such, the enriched one succeeds. For the text of

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[1] " *i. e.* from this it is clear that the rule that a chaste wife takes the whole inheritance is also approved of this writer. " Bâlambhaṭṭi p. 200 l. 21.

See *Vinayakrao* vs. *Luxmibai* 1 Bom. H. C. Rep. (O. C. J.) 117 at p. 122.

[2] According to Mitâksharâ, the right of a daughter is based on consanguinity and not religious merit, as is the case under the Dâya-Bhâga, under which no daughter could inherit unless she was capable of bearing male issue, who would then offer funeral oblations to the maternal grandfather ; so that widowed daughters having no male issue, or daughters who have an incapacity for bringing any but daughers into the world, are excluded under the *Dáya-Bhága* (See Ch. XI. 2-1.), In this respect the Smṛiti-Chandrikâ in giving the reason of this rule appears to adopt the same line of reasoning (See Ch. XI sect. II p. 12). But the Madras High Court held this to be a merely moral precept and has followed the Bombay ruling in *Advayappa vs. Rudrawá* 4 Bom. 104 at p. 111, in *Simmani Ammal vs. Muttammal* 3 mad.265 at p. 269. See also *Vedammal* vs *Vedanayaga* 31 mad. 100 at p. 108; and also *Vinayakrao* vs *Luxmibai* 1 Bom. H. C. Rep. (O. C. J.) at p. 125.

Gautama[1] *viz.* "A woman's *stridhana* goes to her daughters, unmarried or unprovided " is equally applicable in the case of the father's estate. **(5)** Nor, must it be supposed that this relates to the appointed daughter: for, in treating of the male issue, an appointed daughter and her son have been pronounced equal to an *Aurasa* son (by the text): " Equal to him is the *putrikâ-sutaḥ*"

The daughter's sons.

(**6**) By the import of the particle 'also' (*cha*), on failure of daughters, the daughter's son succeeds to the estate. Thus **Vishnu**[2] says: " If a man leave neither son, nor "son's son, nor issue, the daughter's sons shall take " his wealth. For, in regard to the (right to the) performance of " obsequies of ancestors, the daughters' sons are considered as sons' sons." " **Manu**[3] likewise declares, " By that male child[4], whom a daughter,

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[1] Ch. XXVII. 24.

[2] Referring to this passage, and to *Dáya Bhaga* Ch. XI. sec. II p. 18–20. the Madras High Court remarks in *Karuppi Nachiar* vs. *Sankar Narayana Chetty* 27 Mad. 300 at p. 311 :—

" The difference in his (*i. e.* daughter's son's) position under the old law and the present law is that under the former if he is the son of an appointed daughter (and only one such daughter can be appointed), he becomes by a fiction of law the son or son's son of the maternal grandfather, and as such, a member of the grandfather's family, and is not a member of his own father's family" (see note 1 on p. 216 above). " Under the present law he is a member of his own father's family, but he is regarded as being also as good as a son's son to his maternal grandfather" see also the observations of the Court in *Jamiyatram* vs. *Bai Jamna* 2 Bom. H. C. R. (A. C. J.) 11. at p. 14 sqq. as to whether a daughter's interest during the lifetime of a widow is a vested one or a merely contingent estate. See also *Vithalrao* vs. *Ramrao* 24 Bom. 317=2 Bom. L.R. at p. 18 and *Muttuvaduganatha Tevar* vs. *Periasami* 16 Mad. 11. at p. 16 to 17.

[3] Ch. IX. 136.

[4] Here the claim of the daughter's son to the estate of the maternal grandfather has been demonstrated. Bâlambhaṭṭa argues a claim for the daughter's daughter on the analogy between succession to the *Stridhana* and inheritance of the paternal estate. (See Bâlambhaṭṭi p. 207 ll. 16–29 and p. 223 l. 26.)

There is no support in Yâjnâvalkya–Smṛiti for the right of the daughter's daughters as heirs coming immediately after the daughter's sons. Nor is there any direct authority in the Mitâksharâ. But Bâlambhaṭṭa refers to the special text of Yâjnâvalkya (II. 145) on the succession to Stridhana, and to the text of Nârada viz : "The daughters take the residue of the property of the mother, " and maintains that on the same grounds the inclusion of the daughter's daughter along with the daughter's son in the particle *cha* (and) in the line of succession is proper. "And," adds the author of Bâlambhaṭṭi, "this is " proper also, as in the case of a succession to *Stridhana*, the order is, daughter, daughter's " son, grandson &c., so in the case of a succession to the father's estate, the son, grand- " son, his son, widow, daughter daughter's son, daughter's daughter &c. would be the " order inferrable by analogy, having regard to (the doctrine of) propinquity. Vijnâne- " śwara also having referred to the text of Gautama (Ch. XXVIII. s. 22) viz: " a " woman's stridhana goes to her daughters whether married or unmarried " as being "whether not appointed or appointed, shall produce from (a husband of) "an equal class, the maternal grand-father becomes the grandsire of a "son's son ; he shall offer the funeral cake and take the estate."

[**Colebrooke Sect. III**]

[Right of Parents.]

(**1**) On failure of these (heirs) the two parents *i. e.* the mother and the father are successors to the property.

(**2**) Although[1] the order, in which parents succeed to the estate, do

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" equally applicable in the case of the father's estate, this right of the daughters' " daughters to succeed is also approved by him. Otherwise, the daughter's daughters " having been referred to first (*i. e.* in the succession to the mother's property) and there " being no reference to them, nor their inclusion here, it would come to their entire " exclusion as heir at all. " And so Bâlambhaṭṭa maintains that the daughter's daughter is also an heir immediately after the daughter's son. And this is proper.

West and Buhler in their Hindu Law (third Edition p. 130 (c.)) have a note on this subject. It does not refer to this line of reasoning of Bâlambhaṭṭa and is unconvincing as a ground for excluding daughter's daughter. Further on, at p. 477, a precedent from Thana has been quoted, in which the answer simply states in general terms that the second cousins and the grand-daughter are not heirs.

The exclusion of this class of heirs *viz.* daughter's daughter from their proper place in the order of succession would thus appear to be not based on sound reasons.

[1] Mark the following passage from the Subodhini which serves as a very good introduction to the passage in the Mitâksharâ : See Subodhini p. 70 ll. 31-33. Indeed, in the absence of the daughter or the daughter's son, the parent's right of succession is laid down. However, as the term ' parents ' *Pitarau* is in the *Ekas'esha* compound form *i. e.* omitting others and retaining the one member of the compound, the question would arise whether the parents take conjointly or severally, and again whether the order of succession is optional or regulated and fixed.

To this Vijnânes'vara gives an answer : that of the two parents, the mother and father, the mother has preference,

His reasons may be summarised thus :—

(1) In dissolving the compound word *Pitarau* the word *Mâtâ* comes first.

(2) Even when the *ekas'esha* compound is not used, and the ordinary *Dwandwa* is used, as in *Mâtâpitarau*, the word Mâtâ comes first.

(3) The text also gives the same order, whether the express or the implied sense is taken.

(4) In the case where a man has several wives and several sons by each wife, the propinquity between a particular son and his mother is greater than between him and the father. See Bâlambhaṭṭi. Subodhini attempts an explanation on the same lines as adopted by the Mitâksharâ.

not clearly[1] appear, since a 'conjunctive compound' is declared[2] to present the meaning of its several terms at once, and the *ekaśesha*[3] is regarded as an exception to that[4], still as the word 'mother' stands first in the sentence[5] in which the compound is resolvable, and also (since) in the case where the *ekaśesha* (compound) is not used, *i. e.* in the regular[6] compound expression (*mâtâpitarau i. e.* mother and father), the word mother is stated first, it follows from the order of[6] the terms and that of the sense which is

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This is not quite clear. Vijnânesvara says that because the father is a *common* parent of all, and the mother a *particular* parent, therefore she has greater propinquity, a reasoning which is not quite convincing. See note further p. *Naran* vs. *Dolatram* 6 Bom. 541 at p. 544; the rule of propinquity alone having the final determining force the mother has preference. See *Anandi* vs. *Harisaba* 33 Bom. at p. 307. *Lallubhai's* case 2 Bom. at p. 439.

N. B. Mother does not include the step-mother. *Rama Nand* vs. *Surgiani* 16 All. at p. 224.

The propinquity here referred to is different from the propinquity elsewhere in the *Mitâksharâ :* See *Vithalrao* vs *Ramrao* 2 Bom. L. R. 139 at p. 157=24 Bom. 317.

[2] *i. e.* from the text of Yâjñavalkya II. 135-136 above p. 227-228.

[3] According to the rule of *Pânini*, (II. 2 29). the *Dwandwa* compound is formed, when two or more words occur with the import of the conjunctive "and" (च *cha*). But it is not every combination of words joined together by the conjunctive particle (*cha*) 'and' that goes to make up the *dwandwa* compound. The conjunctive (*cha*) has the power to indicate four principal meanings *viz.* (1) Community of reference (समुच्चय), (2) Collateralness of reference (अन्वाचय), (3) reciprocation (इतरेतरयोग) and (4) Cumulation (समाहार) and it is only in these last two of its meanings that the particle *cha* helps to make up a *dwandwa* compound.

[4] एकशेष—is a species of the *dwandwa* or conjunctive compound. Literally it means 'the remainder of the one.' It is a compound in which one member is retained and all the others are omitted, the one member which is retained being expressive of all those that are omitted यः शिष्यते स लुप्यमानार्थाभिधायी *i. e.* in the reciprocal compound of पितरौ *pitarau*, which is compounded of the two words *Mâtâ cha pitâ cha*, only one word viz: *pitar* is retained and it is expressive of the other which is dropped. श्वशुरौ, भ्रातरः, are other instances. It may be noticed thus, that according to strict grammatical interpretation any plural form is an instance of *ekas'esha*, *e. g.* रामाः=रामश्च रामश्च &c. This *ekas'esha* is optional, and the regular form may be retained. *e. g.* instead of *Pitarau* (ekas'esha), it may be *Mâtâpitarau* (dwandwa). See Pâṇini I. 2-70.

[5] *Vigraha* is the dissolution of the compound, and a *vigraha-wâkya* is the sentence in which the dissolution of the compound is brought out. The compound expressions *pitarau* as well as *Mâtâ-pitarau* are both resolvable into the component elements in the same way *i. e. Mâtâ cha pitâ cha*—" Mother as well as the father."

[6] See. Pâṇini II. 2. 34. This Sûtra states the rule that a word-form which has fewer vowels is placed first in a dwandwa compound and the *Wârtika* on this enumerates several cases in which certain word-forms are placed first *e.g.* names of seasons and stars consisting of equal syllables, a word consisting of light vowels, a word expressive of the more honourable of the two (अभ्यर्हितत्व) &c., are placed first, and this last class is illustrated in the *Mahâbhâshya* of *Patanjali* and in the *Kâs'ikâ Vritti* of *Wâmana* by this very compound word viz : *Mâtâpitarau*.

thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance, and, on failure of her, the father. (**3**) Besides, the father is a common parent to the other sons also, but the mother is not so; and since her propinquity is consequently greatest, it is just that she should take the estate in the first instance, conformably to the text[1] "to him who "is the nearest among the *sapiṇḍas*, the inheritance shall belong". (**4**) Nor is the claim in virtue of propinquity restricted to *sapiṇḍas*[2], but on the contrary, it appears from this very text, that the rule of propinquity alone is effectual, since even in the case of the *samânodakas* and other relations, a claim to inheritance arises without any[3] exception. (**5**) Therefore, since, of the two parents (the mother and the father) the mother alone is the nearest in propinquity, it is more proper that she should take the estate. But on failure of her the father is successor to the property.[4]

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[1] Of Manu Ch. IX. 187. See *Babulal* vs. *Nankulal* 22 Cal. 339 at p. 346. *Chinnasami Pillai* vs. *Kunju Pillai* 35 Mad. 152 at p. 158, 159.

[2] *Sapiṇḍa.* See note (6) on p. 232 (*Supra*). Colebrooke translates " Kinsmen allied by funeral oblations, " and *Samanodaka* as. " kindred connected by libations of water. " See *Umaid Bahadur* vs *Udai Chand* 6 cal. 119 at p. 125 (*F. B.*) as regards the meaning of the terms *sapinda* see pages 124 to 127 where it is observed at p. 127. " These considerations leave no room for doubt that the author of the Mitâksharâ has used the word *sapiṇḍa* here not in the sense of " connection by funeral oblations, " but of connections by particles of one body as defined in the *Âchára káṇḍa* (Verse 52 &c.) See also *Lakshmanammal* vs *Tirnvengada* 5 Mad. 241 at p. 245.

[3] अविशेषेण *i. e.* without any differentiation or distinction, quite generally.

[4] The following note by Mr. Colebrooke is important: The commentator *Bálambhaṭṭa* is of opinion that the father should inherit first and then the mother, upon the analogy of more distant kindred, where the paternal line has invariably the preference before the Maternal kindred, and upon the authority of several express passages of law. *Nanda Pandita*, author of commentaries of Mitâksharâ and on the institutes of Vishnu had before maintained the same opinion. But the older commentator of the *Mitâksharâ Visves'vara-Bhaṭṭa* has in this instance followed the text of his author in his own treatise entitled *Madana-Páṛijâta*, and has supported Yâjnâvalkya's argument both there and in his commentary named *Subodhini*. Much diversity of opinion does indeed prevail on this question. *S'rikara* maintains that the father and mother inherit together and the great majority of writers of eminence (as *Aparárka*, and *Kamalákara* and the authors of the *Smṛiti-Chandrikâ*, *Madan-Ratna* and *Vyavahâra Mayukha* &c.) give the father the preference before the mother. *Jimutavâhana* and *Raghunandana* have adopted this doctrine. But *Vâchaspati-Mis'ra* on the contrary concurs with the *Mitâkshara* in placing the mother before the father, being guided by an erroneous reading of the text of *Vishnu* (Sect. I § 6) as is remarked in the *Viramitrodaya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction : If the mother be individually more venerable (See Pâṇini II 2. 35 p. 249 note 6 above), than the father, she inherits; if she be less so, the father takes the inheritance.

[**Colebrooke Sect. IV.**]

(Right of the Brothers).

*PAGE 96.

(1) On failure of the father, the brothers[1] shall share the estate. And likewise **Manu**[2] says " Of him who leaves no male issue, the father shall take the inheritance or the brothers."

Dharès'wara's argument.

(2) As to what has been argued by **Dhâres'wara**[3], that ' under 'the following text of **Manu**:[4] " Of a son dying childless, " the mother shall take the estate; and, if the mother " also be dead, the father's mother shall take the heritage", even while the father is living if the mother be dead, the ' father's mother *i. e.* the paternal grand-mother, shall take the succes- ' sion, and not the father: because wealth taken by the[4] father may go ' even to sons dissimilar in class; but what is inherited by the paternal ' grand-mother, goes to such only as appertain to the same tribe: and ' that therefore the paternal grandmother takes the estate'. (3) This

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[1] *Nanda-Pandita* and *Bâlambhaṭṭa* interpret the term brother as including sisters also *Vide Pâṇini* I. 2-68 According to them, the brothers succeed first, and in their default, the sisters: see Bâlambhaṭṭi p. 209. ll. 25-27. See *Vinayak* vs. *Lakshmibai* 2 Bom. H. C. R. (O. C. J.) 117 at p. 123 where the contraversy as to the 'sisters' being included in the term 'brothers' is referred to and discussed. See also. *Kalian Rai* vs. *Ram Chandar* 24 All. 128 at p. 130. *Chandika Baksh* vs. *Muna Kuar* 24 All. 279. *Kesri* vs. *Ganga* 32 All. 541. *Budhasingh* vs. *Laltu Sing* 35 All. 663. *Moolji* vs. *Cursandass* 2 Bom. L. R. 72 at p. 747=24 Bom. 563. and *Bhagwan* vs. *Warubai* 32 Bom. 300.

[2] Ch. IX. 185.

[3] Vijñane'swara here takes notice of an opinion propounded by certain writers, which is contrary to what has been stated above, about the succession of parents. Dhare'swara is one of these and the author refutes his opinion reverting to the subject by a retrospect anologms to the rule known as "the lion's look." (सिंहावलोकन.)

This rule is explained thus: Just as a lion having killed a certain deer proceeds onwards, and while thus proceeding, a thought occurs to him that there may be another deer also which he would kill and he looks back, and presently kills one following within his range, so an author after having stated his own opinion, after refuting such as occur in the discussion, takes note of such other opinions also as are adverse to his own opinion and as fall within the range of his observation-he states the sequel to his views by way of a retrospect.

[4] " Because if the wealth be regarded as taken by the grandmother, it would become a maternal estate and would go to sons of the same tribe, while a father's estate would devolve on all the sons. *Subodhini & Bâlambhaṭṭi.* This is a clear index of the meaning and extent of Stridhana according to Vîjñaneśvara. It will be seen, however, that this distinction has no longer any force under the case-law, as the grandmother only takes a widow's 'estate' and on her death, succession would be by reference to the last male holder. See *Gandhi Maganlal* vs. *Bai Jadab* 2 Bom. L. R. 574 at p. 583=24 Bom. 574. *Mari* vs. *Chinnammal.* 8 Mad. at p. 119-120.

not approved of by Visvarupàchà-rya.

even the **Holy Teacher**[1] does not assent to: because the heritable right of sons even dissimilar in class has been expressly ordained by a passage above cited[2]: "The sons of a Brâhmaṇa "(in the several tribes) have four shares, or three, or two, or one etc.".

(**4**) As to the text of **Manu**[3]: "The property of a Brâhmaṇa must "never be taken by the King; this is a settled rule", that intends the sovereign, and not a son[4] (*i. e.* of the late owner by a woman of the *Kshatriya* family).

(**5**) Among brothers, such as are of the whole blood take the inheritance in the first instance under the text[5]: "To him, who is the "nearest *sapiṇḍa*, the inheritance shall belong", since those of the half-blood are remote through the difference of the mothers.

(**6**) If there be no uterine[6] brothers, those by different mothers inherit the estate.

(**7**) On failure of brothers also, their sons[7] share the heritage in the order of their respective fathers.

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[1] *i. e.* Viśwarupâchârya; see Subodhini and Bâlambhaṭṭi.

[2] *i. e.* at. p. 203 ll. 18-19.

[3] Ch. IX. 189.

[4] Here, the author intends to avoid a confusion which might arise on account of the term *Kshatriya* indicating generally the ruling class. The author explains that the text intends the prohibition of an escheat to the sovereign the ruling authority–and does not prohibit a son of a Brâhmaṇa born of a Kshatriya wife from taking.

[5] of Manu Ch. IX. 187.

See *Svbramanaya* vs. *Siva Subramanaya* 17 Mad. at p. 325. *Vithalrao* vs. *Ramrao* 2 Bom. L. R. 154-157=24 Bom. 317. and *Bhagwan* vs. *Warubai* 10 Bom. L. R. 389=32 Bom. 300 where this passage has been referred to.

[6] Colebrooke adds in bracket (or whole); the expression in the Mitâksharâ is *Sodara i. e.* persons (born) of the same uterus, and the question would be of importance in the case of those among whom re-marriage of women is allowed by law. For in such a case, there might exist brothers who are 'uterine,' but not 'of the whole blood.'

According to the *Mayukha*, the brother's son comes in after the brother. He does not agree with the opinion of Mitakshara as here expressed (see Mandlik p. 80 ll. 29-36.) see *Haridas* vs. *Rànchchoddas* 5 Bom. L. R. 516. But this rule does not go beyond brother's children. *Chandika Buksh* vs. *Muna Kuar* 24 All. 273 (P. C.) The stricter rule of Mitakshara was applied in *Kesri* vs. *Kalka Prasad* 32 All. 541 (F. B.) where an uncle of the half blood was given preference to the son of an uncle of the whole blood.

[7] This expression has received considerable judicial notice, especially in Madras and Allahabad, the opinions expressed in the two courts differing from one another.

According to the view expressed in Madras, the term 'son' does not include 'grandson'. See *Suraya* vs. *Lakshminarasamma* 5 Mad. 291. *Chinnasami Pillaî* vs. *Kunju Pillai* 35 Mad. 152. and this view seems to be in agreement with *Subodhini* (see p. 74. ll: 23-26 see also Mr. Mandlik's note p. 360). A contrary opinion has been expressed

(8) In case of competetion between brothers and brothers' sons, the brothers' sons have no title to the succession, for the right of inheritance of brothers' sons is declared to be on failure of brothers.

(9) When[1], however, a brother has died leaving no male issue, and the estate has devolved on his brothers generally, if any one of (such) brothers die even before a distribution of their brother's estate takes place his sons do, in that case, acquire a title through their father; and it is fit, therefore, that a share should be alloted to them, in their father's[2] right, at a distribution of property between them and the surviving brothers.

[Colebrooke Sec. V.]

[Succession of kindred of the same family name : termed Gotrajas or Gentiles.]

(1) If there be not even the brothers' sons, the *Gotrajas*[3] take the

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in Allahabad: see *Kalian Rai* vs. *Ramchandra* 24 All.128. *Budha Singh* vs. *Laltu Singh* 34 All. 663 at p. 667 and 675. See also *Kashibai* vs. *Moreshwur* 35 Bom. 389=13 Bom. L. R. 552. In the judgment of this case, the word 'line' has baen interpreted to extend to 6 degrees and reference is made to *Bhyah Ram Singh* vs. *Bhyah Ugar Singh* 13 M. I. A. 373 at p. 394 following what is known as the Harrington theory. As to the theory thus profounded by Mr. Harrington, see Mandlik page 380–383, its practical working out is not free from difficulty, (see West and Buhler's Hindu Law. 3rd Edition p 124 sqq.). The remark in 35 Bom. at p. 392 extending the 'line' to six degrees was not called for by the facts of that case, and it cannot be said that the rule in Bombay has been settled. As an illustration of the consequences of this dictum, see *Khandacharya* vs. *Govindacharya* 13 Bom. L. R. 1005. Also see Telang J. in *Rachava* vs. *Kalingappa* 16 Bom. 716 at p. 719. And this claim is determined by reference to the paternal ancestor, any distinction based on the ground of blood having no place beyond cases expressely specified. See *Vithlrao* vs. *Ramrao* 24 Bom. 367. *Kesri* vs. *Ganga Sahai'* 32 All. 541 (F. B.)

[1] See *Devi Purshad* vs *Thakur Dial* 1 All 105. at p. 112. and *Jasoda Koer* vs. *Sheo Pershad* 17 Cal. 33 at p. 37.

[2] See the rule of Yâjnavalkya on p. 196. ll. 29–30.

[3] *Gotrajas*–this word is made up of the two parts *Gotra*=gens or family and *Ja*=born: Persons born in or belonging to the family. Colebrooke has translated it as 'gentiles', while in 2 M. I. A. at p. 151, it has been rendered as 'More distant paternal Kinsmen'. It should be remembered that the word has a special technical meaning attached to it, and as is generally the case with such terms, they are better understood in their original form than by any equivalent of it in the same or other language.

The term *Sagotra* may also be remembered along with this term. Generally both signify the same thing, but strictly and literally there would be a slight difference between the two. For, the first means and indicates those who are *born* in the (same) the estate. The *Gotrajas* are the paternal grand-mother, the *Sapindas*[1] and the *Samanodakas*. (**2**) Among these, the paternal grand-mother takes the estate first. Because, (although) the paternal grandmother's succession immediately after the mother was seemingly suggested by the text:[2] "And if the mother also be dead, the father's mother shall take the heritage," no place, however, is found for her in the compact[3] series of heirs from the father and others to the nephew : and the text " The father's mother shall take the heritage " is intended only to indicate her (general) competency for inheritance. She takes immediately after his son[4] in the line[5] of succession ; and thus there is no contradiction.

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family, while a *sagotra* is one *belonging* to the *same* family. And this difference becomes important in the case of the female *Sapindas*, some of whom are of the same family *i. e.* (sagotra), though they may not be born in the same family while others are *Sapindas* 'born in the family' though they may not of the same family. See *Lallubhai* vs. *Cassibai* 5 Bom. 110 (p. c.) at p. p. 122-125=7 I. A. 212 at p. p. 234-236 where the terms *Sapindas* &. are retained in their original form. *Gotra* is not exactly on a par with The Roman *Jens* though the general principles underlping the two are the same.

[1] *Sapindas* and *Samanodakas*. These two terms have been explained further on in the text of Mitâksharâ quoting from Brihanmanu (p. 256 l. 7-10). The *Sapindas* referred to here are the *gotraja* or *sagotra* sapindas, and not any *Sapindas* covered by the definition of that term as given by Vijñanesvara. See note 6 on p. 232 (*supra*).

[2] Of Manu ch. IX. 217 (see p. 231 ll. 5 & 6. *supra*)

[3] "Compact series of heirs," *i.e.*-The expression in the Mitâksharâ is *Baddha-krama* " (Those) whose order (of succession) has been fixed, (as in a phalanx)". The meaning is this:—The mother takes as an heir named in the expression '*Pitarau*', parents *i. e.* mother and father ; and so immediately after her comes the father by virtue of the compound expression. Through the breach made by the father, the whole 'serried phalanx' of heirs ending with the '*Tatsuta*' comes in, leaving no room for the grandmother to enter and thus it is that she necessarily has to wait till a gap is left for her to enter. See *Mohandas vs. Krishnabai* 5 Bom. 597 at p p. 602 & 603.

[4] *Tatsutâ*—*i. e.* the son of the brother.

[5] ' The line '—The original word is *santâna*—which literally means something which is going on continuously (*sam* + *tana*). How far this ' line ' extends has been the subject of much discussion, and recently, this question has attracted considerable attention in Courts in India, especially in Allahabad and Madras; and in one case the Bombay High Court, appears to have expressed a view which is in a line with the Allahabad view, the Court in that case extending the 'line ' to seven degrees.

According to the *Subodhini*, the 'line' would appear not to extend beyond the ' tatsuta, ' the expression used by the *Mitâksharâ*, and Mr. Mandlik in an elaborate note has maintained this view, which would appear to be the proper view, See note 7 on p. 252 *Suprâ*). See also the following cases : *Rahi* vs. *Govind* 1 Bom. 105; *Vithalrao* vs. *Ramrao* 24 Bom. 317=2 Bom. L. R. 157. *Budhasingh* vs. *Laltusingh* 34 All. 663 at pp. 667-675. *Chinnasami Pillai* vs. *Kunja Pillai* 35 Mad. 152 at p. 158. *Kassibai* vs. *Moreshwar* 35 Bom. 389=13 Bom. L. R. 552. *Lallubhai* vs. *Cassibai* 5 Bom. 121 *Surayya* vs. *Lakshminarasayya* 5 Mad. 295.

(**3**) In the absence of the paternal grand-mother, however, the *sapindas* born[1] in the same *gotra* (with the deceased), such as the paternal grand-father and others, inherit the estate, for *sapindas* of a different *gotra* are indicated by the term *Bandhu.* (**4**) Among these, moreover, on failure of the fathers's line[2], the paternal grand-mother, the paternal grand-father, the paternal uncles and their sons, are successively heirs to the estate.

(**5**) On failure of the paternal grand-father's line, the paternal great-grandmother, the paternal great-grandfather, his sons and their sons

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' *Utkarshe' tât'sutârantaram*—in the line of s a succession immediately after the *tatsuta*. There are variations in the reading of the passage in the Mitâksharâ. These are noticed by Bâlambhaṭṭa. (See p. 211 ll. 20–22.)

[1] See note above and *Lallubhai* vs. *Cassibai* 5 Bom. at p. 122–7 I. A. 236 *Saguna* vs *Sadashiv* 26 Bom. 710 at p. 713. *Umaid Bahadur* vs. *Udichand* 6 cal. 119 (F. B.) at p. 120. *Kallianrai* vs. *Ramchandar* 24 All 128 at p. 131. See observations in 13 M. A. 1. A. at p. 378.

[2] Colebrooke, translates, " On failure of the paternal grandmother, the (*gotraja*) kinsmen born in the same familiy with the deceased and (*sapinda*) connected by funeral oblations, namely the paternal grand-mother &c.". Bâlambhaṭṭa insists that the grand-father takes before the grandmother. (See p. 211 ll. 23–33). But the Mayukha does not support him here as in the case of the parents. Bâlambhaṭṭa's reasoning, however, is not convincing.

The commentator takes occasion to censure an interpretatian which corresponds with that of the *Mitâksharâ* as delivered in the following section (S. 6. § 1); and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth: because it would follow, that the father's sister's son, and the rest would inherit, although the man's own sister and sister's sons were living. Bâlam-Bhaṭṭa, however repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons: which is indeed Nanda-Pandita's own doctrine.

He adds, 'after the heirs above mentioned, the *sâkulya* or distant kinsman is entitled to the succession : meaning a relation in the fifth or other remote degree.'

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitâksharâ*. On the other hand, the author of the *Viramitrodaya* has exactly followed the *Mitâksharâ*; and so has *Kamalâkara* : and it is also confirmed by *Mádhavácharya*, in the *Vyavahára-Mádhava*, as well as by the *Smriti-chandrika*.

But the author of the *Vyavahâra-Mayukha* contends for a different series of heirs after the brother's son: ' 1st, the paternal grand-mother; 2nd, the sister ; 3rd, the paternal grand-father and the brother of the half blood, as equally near of kin; 4th, the paternal great-grand-father, the paternal uncle, and the son of a brother of the half blood, sharing together as in the same degree of affinity.' He has not pursued the enumeration further; and the principle stated by him–*viz*. nearness of kin–does not clearly indicate the rule of continuation of this series—Colebrooke.

Having regard to the importance of the point involved and having regard to the divergence of views expressed in India in quite recent time, the necessity of a definite decision on this point will soon arise, when the authorities referred to above will be of use.

(inherit). In this manner must be understood the succession of *sapindas*[1] of the same *gotra*, as far as the seventh (ascendant).

(**6**) If there be none such, the succession devolves upon the *samânodakas*, and these must be understood to be seven (in degrees) beyond the *sapindas* : or else, as far as the limits of knowledge as to birth and name extend. As says **Brihan-Manu**[2] "The relation of the *sapindas* "ceases with the seventh person ; and that of the *samânodakas* ceases (after "extending) as far as the fourteenth (degree), or as some affirm, (it "reaches) as far as the memory of birth and name (extends); after that is "indicated by (the term) *gotra*."

[**Colebrooke Sec. VI.**]

* Page 97.

[Of the succession of cognate kindred or Bandhus.]

(**1**) On failure of the *Gotrajas*,[3] the *Bandhus* succeed to the estate. Bandhus moreover, are of three kinds, the *Âtma-bandhus* (or his own bandhus), the *Pitri-bandhus* (or his fathers's bandhus), and the *Mâtri-bandhus* (or mother's bandhus); as has been declared[4] (by the following text): " The sons of his own father's sister, the sons of his own mother's " sister, and the sons of his own maternal uncle, should be considered as " the *Âtma-bandhus* (or his own bandhus.) The sons of his father's paternal " aunt, the sons of his father's mother's sister, and the sons of his father's " maternal uncle, should be known as his *Pitṛi-bandhus* (or his father's " bandhus). The sons of his mother's father's sister, the sons of his mother's " mother's sister, and the sons of his mother's maternal uncle should " be known as his *Mâtṛi-bandhus* (or his mother's bandhus[1])."

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[1] *Samânagotra-sapindas*—are those *Sapindas* who belong to the same *gotra* as that of the deceased (see note above).

[2] To the same effect is Manu Ch. V.-60. It runs thus ·

सपिण्डता तु पुरुषे सप्तमे विनिवर्तते ।
समानोदकभावस्तु जन्मनाम्नोरवेदने ॥ अ० ५ श्लो० ६०.

and the Vyavahara-Mayakha refers to this passage Tr. "The *Sapinda* relationship ceases with the seventh person [in the line], and that of *Samanodakas* (*i. e.* those connected by an oblation of water) ends when births and names are no longer known." Mandlik p. 82 ll. 10-13.

And relying on this and other texts it has been held in *Bai Deokore* vs *Amritram Jamiatram* 10 Bom. 372 at p. 379-380—that the word *Samânodaka* includes descendants from a common ancestor more remotely related than the thirteenth degree from the propositus.

See also *Umaid Bahadur* vs. *Uddi Chand* 6 Cal. 119 (T.B.). *Mari* vs *Chinnammal* 8 Mad. at p. 128. *Ram Barun Lal* vs. *Kamla Prasad* 32 All. 594 at p. p. 597-598. where it was held that a *Samanodaka* is a nearer heir than a *bandhu*; and *Bhagat Ram Singh* vs *Bhagat Ugar Singh* 13 M. I. A. at p. 380. *Kalgauda* vs. *Somappa* 33 Bom. 669 at p. 683.

[3] *Gotrajas* and *Bandhus*—See note above. Both are *Sapindas* but the former are *Sapindas* of the same *gotra* or *Sagotra-Sapinda* while the latter are sapindas, of a different *gotra* or *bhinnagotra sapindas*. Mr. Colebrooke translates these terms as ; "gentiles and cognates". See *Muthusami* vs. *Sunambadu Muthukumaraswami* 23 I. A. 83-89=19 Mad. 405.

[4] Bâlambhtta assigns this text to *Vriddha-S'âtâtapa* (see p. 214 l. 28), but it is ascribed to *Baudhâyana* in *Vyavahâra-Mâdhava* (see p. 354. Bibliothica India Series).

(2) Here also, by reason of near affinity, first the *Atma-bandhus* succeed to the estate; on failure of them, the *Pitṛi-bandhus*, and on their failure the *Mâtṛi-bandhus* (succeed). This must be understood to be the order (of succession here intended).

[Colebrooke Sect. VII.]

[[2]Of the succession of strangers upon failure of the kindred.]

(1) On failure of the *bandhus*, the preceptor,[3] and on failure of him, the pupil (succeeds) according to the text of Âpastamba[4] : " On failure of " the sons, the nearest *sapiṇḍa* (inherits); on failure of them, the preceptor; " on failure of the preceptor, the pupil (shall take the wealth) " **(2)** If there be no pupil, the fellow-student is the successor. He, who received

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The enumeration of *bandhus* given here is not exhaustive but only illustrative. *Girdharee Lal* vs. *The Bengal Government* 12 M. I. A. 448; *Mohandas* vs. *Krishnabai* 5 Bom. 597 at p. 601. *Laksmanamal* vs *Tirunengoda* 5 Mad. 241 at p. 245. A contrary view was expressed in *Narasimma* vs. *Manganmal* 13 Mad 10 at p. 13, but having regard to the dicision of the Privy Council in 23 A. 83 and 19 Mad. 405 cited above the reasoning of the decision in 13 Mad. 10 would seem not to apply now, even to Madras, nor does it " determine the order of succession as between several lines within each of the series of *bandhus*. " per Jenkins C. J. in *Saguna* vs *Sadashiva* 4 Bom. L. R. 527 at p. 530=26 Bom. 710.

[1] The three kinds of *bandhus* mentioned here are not mentioned in *Aparârka* (see p. 745 Ananads'rama No. 45) see however Mayukha (Mandlik, sk p. 55. Eng. Tr. p. 82: ll. 28 &c).

[2] *N. B.* Now follow the principles of succession of strangers. It may be noted that this line cannot be resorted to unless and until all the sagotra and other relations are exhausted. See *Lakshmanammal* vs. *Tirunengada* 5 Mad. 241 at p. 245. See also *Umed Bahadur* vs. *Udai Chand* 6 Cal. 119. 16 Bom.

[3] *Âchârya* is the word in the text for the English word preceptor. There are other terms indicative of the same, such as *Guru*, *Upâdhyâya*, *Ṛitwik* &c, but there are minute distinctions in their import. See Yâjñavalkya I. 34, 35. Manu Ch. II. 140-145, where all these terms are explained and the importance of each is indicated. See also Ama akosha II-7-(6-7).

[4] Dharmasûtrâs. II-6-14-(2-3).

his investiture, lessons[1] (in the scriptures), with their meaning and thus acquired knowledge proceeding therefrom from the same preceptor is a fellow-student.

(3) If there be no fellow-student, some learned[2] and venerable priest should take the property of a *Brâhmaṇa*, according to the text of **Gautama**[3] " *S'rotriyas* or venerable priests, should share the wealth of a *Brâhmaṇa*, who leaves no male issue." (**4**) For want of such a successor, any *Brâhmaṇa* (may be the heir): As says **Manu**[4] : " But on failure of "all (the heirs), *Brâhmaṇas* (shall) share the estate; such (*Brâhmaṇas*) as are "versed in the three Vedas, pure and self-controlled (and are): thus the "law is not violated."

(5) Never shall a king take the wealth of a *Brâhmaṇa*, *vide* the text of **Manu**:[5] " The property of a *Brâhmaṇa* shall never be taken by a king; this is settled law." It has also been said by **Nârada**: " If for the wealth of a *Brahmaṇa*, on his demise, there be no heir, it must be given to a *Brâhmaṇa*; (acting) otherwise,[6] the king becomes tainted with sin."

(6) The wealth of a *Kshatriya* and others, (however), in the absence of heirs down to the fellow-student, the king may take, and not a *Brâhmaṇa*. As says **Manu**[7] " But, (the property) of other classes, on failure of all (heirs) the king may take."

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[1] The expression in the text is *Adhyayana*—study. The study of the Vedas is the most important part of a Man's education, and an *Adhyayana* necessarily includes their study.

[2] *S'rotriya*—a learned Brâhmaṇa not a mere *Brâhmaṇa*. Note the following.

जन्मना ब्राह्मणो ज्ञेयः संस्कारैर्द्विज उच्यते । विद्याभ्यासी भवेद्विप्रः श्रोत्रियस्त्रिभिरेव हि ॥

The derivation of the word is explained by reference to two rules of Grammar Pâṇini 5-2-84 and 4-2-59., the result of which is that the term is applicable to such a *Brahmaṇa* as has mastered the whole *Vedic* lore.

[3] Ch. 28-41.

[4] Ch. IX-188.

[5] Ch. IX-189.

[6] Otherwise—*i. e.* if he takes it himself (see *Balambhaṭṭi* p. 216 l. 7.)

[7] Ch. IX. 189.

[**Colebrooke Sec. VIII.**]

[On[1] succession to the Property of a Hermit or an ascetic.]

(1) It has been declared that sons and grandsons[2] also take the *dâya*, and that on failure of them, the widow and others. The Author now propounds an exception to both these

Yâjñavalkya Verse 137.

Of a hermit, an ascetic, and of a life-long celibatist, the heirs to the property are, in their order, the preceptor, the virtuous[3] pupil, the spiritual brother and associate in holiness.

(2) **Mitâksharâ**: *Of a hermit* (**Wânaprasthasya**), *of an ascetic*[4] (**yateḥ**), and *of a life-long celibatist* (**Brahmachâriṇascha**), *in their order* (**krameṇa**) *i. e.* in the inverse[5] order, *the preceptor*, (**A'châryaḥ**[6]),

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[1] This is an exceptional rule stated specially to be applicable in the case of hermits &c see *Gajraj Puri* vs. *Achaibar Puri* 16 All. at p. 195. Mayne on Hindu Law P. 506. West and Bühler's Hindu Law p. 532. In *The Collector of Dacca* vs. *Jagat Chander Goswami* 28 Cal. 608, an application was made for letters of administration to the estate of a deceased desciple. It was opposed by the Collector of Dacca on behalf of Government. But the report does not give the grounds of the opposition nor does it give any details. The High Court (Maclean C. J. and Banerjee J.) confirmed the order granting the 'Letters' as prayed for. On this passage Mr. J. C. Ghose observes at p. 788 (2nd Ed.) " With all respect to the learned judges, it should be observed, that according to Hindu Law, the ordinary case of succession should apply to that strange individual the married ascetic. Indeed, according to ancient law, ascetics who have resumed worldy ways, are slaves of the King and their property in strictness belongs to him." (citing *Nárada.*) The report does not give good ground for these observations, nor, it is submitted, are the observations justifiable on the general customary law prevailing among the hermit sects such as the bairagis, gosavis &c. See also *Chhajugir* vs. *Divan* 29 All. 109 at p. 162.

[2] Mr. Colebrooke adds after grandsons in bracket "(or great-grandsons)" relying upom Bâlambhaṭṭa, who suggests the inclusion of great-grandsons on the strength of the conjunction *Cha*—also. Upon this translation it has been observed at p. 378 of 13 M. I. A. *Bhagat Ram Singh* vs. *Bhagat Ugar Singh* : "This incorporation of the words or great-grandsons in the text of the Mitaksharâ, shows that the translator (whose authority is of the highest order) considered that the inclusion of the great-grandson, among immediate heirs, was the approved doctrine of the later class of the expositors of the law of Benares".

[3] The condition of being virtuous is a general requisite of a pupil. The preceptor and the spiritual brother become successors only if they are virtuous and so the qualifying clause has been placed in the middle (see *Subodhini* p. 74.) and so Vijñanes'wara observes further on that even a preceptor, if ill-conducted does not become entitled to a share.

[4] The terms 'hermit' and 'ascetic' are severally used for the two words 'Vânaprastha' and ' Sanyas ' in which indicate two distinct orders.

[5] See Bâlambhaṭṭi p. 244.

[6] For the full significance of this term (आचार्य) and its distinction from the other terms of similar import see Yâjñ. I. 34 and 35. and Manu ch. II. 140-145 (see note 3 on p. 257 above).

a virtuous pupil (**satchhishyaḥ**), *and a spiritual brother and associate in holiness* (**dharmabhrâtraikatîrthî cha**), are successors *to the property* (**ṛikhthasya**) *i. e.* of the wealth.

(3) *The Life-long celibatist* must be a professed[1] or perpetual one; of a temporary[2] student, however, the mother and the other heirs alone take. And the preceptor is declared to be the heir to a professed student as an exception[3]. **(4)** A virtuous pupil, however, takes the property of a *yatî* or ascetic. *A virtuous pupil*, (**satchhishyaḥ**), again, is one who is assiduous in receiving[4] lessons in theology, in retaining the same, and in practising its ordinances. For, a person whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or any like other. **(5)** A spiritual brother and associate in holiness takes the property of a *hermit* (**vânaprastha**). *A spiritual brother* (**Dharmabhrâtâ**) is one who is engaged[5] as a brotherly companion. *An associate in holiness* (**Ekatîrthî**) is one appertaining to the same hermitage. One who is 'a spiritual brother' and also 'appertains to the same hermitage' is "a spiritual brother and associate in holiness."

(6) [6]In the absence of these *viz.* the preceptor and the rest, an associate in holiness alone takes even though sons and other (natural) heirs exist.

An objection.

(7) By the text of **Vasistha**[7] : "But those who have entered into another order receive no share," there is not even the right of inheritance of those who have entered into another order; how can there be a partition of their property? Nor has a professed student a right[1] to his own acquired wealth: for the acceptance of presents, and other means of acquisition are forbidden to him. And since **Gautama**[2] ordains, that, "A mendicant shall have no hoard," there is no possibility of the self-acquired wealth in the case of a mendicant also.

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[1] *i.e. Naishthika* as distinguished from the *Upakurvâṇa*.

It is derived as : निष्ठा मरणं तत्पर्यन्तं ब्रह्मचर्येण तिष्ठति. (निष्ठा–ठक्).

A perpeptual religious student who continues with his spiritual preceptor even after the prescribed period, and vows life-long abstinence and charity. See Yâjñavalkya I. 49.

An *Upakurvâna*—is only a temporary student. He is in a state of pupilage for a limited time, wishing to pass on to the state of a householder (gṛihastha).

[2] *i. e.* to the claim of inheritance of the mother and other heirs (see Subodhini p. 74. l.32. Balambhatti. p. 244 p. l. 24).

[3] Mr. Colebrooke translates "who is assiduous in the study of theology &c." The original specifies three distinct stages of the 'study' viz. of *S'ravaṇa* listening to the lectures or receiving the lessons, (2) *dhâraṇa*—retaining them and (3) *Tadarthánushṭhána*—practising its ordinances intelligently.

[4] The original is अध्यात्म *Adhyâtma i. e.* that which addresses itself to the soul—*i. e.* Philosophy, That portion of religious study which refers to the study of Philosophy.

[5] *i. e.* who has taken a vow or undertaking; and who has been accepted as a brother (see Subodhini p. 75 l. 6. Bâlambhaṭṭi p. 245. l. 2).

[6] To the enquiry as to who should be the heir to the property of a *Brahmachary, Yati and Vânaprastha* in the absence of the heirs named above, the author has mentioned the *Ekatirthi* " an associate in holiness. " (See Subodhini p. 95 l. 7.)

[7] Ch. XVII. 52.

The answer.

(8) The answer is, a hermit indeed may have property, for the text[3] expresses: "He (*i. e.* a hermit *Vânaprastha*) may make a hoard of property sufficient for a day, a month, six months, or a year, and in the month of A'śvina he should abandon what has been collected." The (*yati* or) ascetic too may possess clothes, books and other requisites under the text,[4] "Or he should wear clothes to cover his privy parts; and he may also take the requisites for his austerities[5], as also sandals." The professed student also can have clothes and other property for his bodily sustenance. **(9)** And it was therefore proper to explain the distribution of such property.

*PAGE 98.

[**Colebrooke Sec. IX.**]

[On the union of kinsmen after partition].

(1) The Author next[6] propounds an exception to the rule[7] that the wife and certain other heirs succeed to the estate of one "who departs for heaven leaving no male issue"

Yâjñavalkya Verse 138.

A re-united, however, shall keep the share of his re-united[8] (parcener) who is deceased; or shall deliver it to one born.

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[1] *i. e.* he cannot claim anything as his self-acquisition. The expression in the Mitâksharâ (p. 97. l. 29) is स्वार्जितधनसंबंध : *Swarjita-dhanasambamdhaḥ.*

[2] Ch. III. 11.

[3] Of Yâjñavalkya Prâyaschittadhyâya 47. (p. 196 ll. 15-16). also Manu Ch. VI. 15.

[4] of a Smriti—author not known.

[5] *Yôgasambhârabhedâḥ*—the different articles required for practising *Yoga* *i. e.* the works treating of the same. (See Subodhini p. 75. l. 9. Bâlambbatti p. 245 l. 15).

[6]—[7] Next *i. e.* after laying down the special rule of succession in the case of hermits &c. the author propounds another rule which is also of a special nature and is thus an exception to the general course of succession given in Yâjñavalkya II. 135 and 136 (pp. 227 and 228 above).

[8] The construction here is terse and also involved. The first and the second quarters make in themselves independent clauses. But these again are severally connected with the two verbs *dadyât* and *apaharet* in the third quarter; which again are alternatively connected with the two qualifying expressions *jâtasya* and *mṛitasya.*

(2) Mitâkshara,—effects which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is *a re-united parcener* (**sansṛishti**). **(3)** Re-union, moreover, cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle; as **Bṛihaspati**[1] declares: "He who being once separated, "dwells again through affection with his father, brother, or paternal uncle, "is termed re-united." **(4)** Of such *a re-united* (**sânsrishtinaḥ**) parcener, the share or allotment must be given by the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. On failure of male issue, the re-united parcener[2] alone shall take the inheritance, and not the widow or any other heirs.

(5) The author states an exception to the rule that, "a re-united member shall keep the share of his re-united parcener"

Yâjñavalya Verse 139 (2).

But an uterine[3] brother of his uterine brother.

(6) Mitâkshara:—The expressions "of a re-united," "a re-united" are to be understood here. Hence, the allotment of an uterine re-united brother who is deceased, shall be delivered by the surviving uterine re-united brother to a son born[4] of the re-united. On failure of him, he shall retain it. This is the construction as before. Thus if there be uterine and non-uterine brothers together, the uterine re-united brother alone will take the estate of a uterine re-united parcener, and not the non-uterine one, even though re-united. This, thus, is an exception to what has been said before.

(7) Next, in answer to an inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a half brother re-united, and an uterine brother non-re-united, the Author delivers a reason why both shall take and divide the estate.

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[1] Ch. XXV. 72 (Secred Bom. of the East Vol. XXXIII. p. 381.

[2] The singular number is indicative of the whole class of re-united parceners.

[3] Colebrooke adds in bracket (or whole)—but the expression in the text is *sodaraḥ*—meaning, he who was born from the same womb. The term 'uterine' may mean the same thing as 'whole' in those cases where women marry only once. But it cannot be an universal equivalent, as it is possible for a woman to have several sons from different husbands, and such sons although they would be uterine brothers or *sodaráḥ*, will not be 'whole' brothers.

[4] *i. e.* born subsequently to the death of the coparcener, the widow's pregnancy not having been apparent then.

Yâjñavalkya Verse 139.

A half[1]-brother, being re-united, may take the succession, but not a half brother not re-united: but one united (by blood, though not by parcenery) may obtain the property; though not re-united and not (exclusively) the son of a different mother.

Mitâksharâ: (8) A *half-brother* (**Anyodaryaḥ**) *i. e.* a brother born of a rival wife, being *a re-united parcener* (**Sansṛishti**) takes the estate, but a half-brother does not obtain the goods who is not re-united. Thus, by the tests of affirmative and negative reasoning, re-union has been shown to be a reason for a half brother's succession to the property.

(9) The term 'not re-united' is connected[2] also with what follows: and hence, even one who was not re-united, may take the wealth of a (deceased) re-united (relative). Who is he? (so) The Author says: "*one united.*" (**Sansṛishtaḥ**) *i. e.* 'one united' by the identity of the womb[3], in other words, an uterine brother. By this it has been declared, that relation by the identity of the womb is the foundation of the (right of) succession of an uterine brother, though not re-united in coparcenery. **(10)** The term "united" likewise is connected with what follows: and here the term 'united' signifies one who is 're-united' (as a coparcener).

Not the son of a different mother (**Nânyamâtṛijah**): this expression must be interpreted by supplying the affirmative particle '*eva*' understood. Although re-united, one born of a different mother cannot exclusively take the wealth of his re-united parcener.

(11) Thus, by the occurrence of the word "though" (*api*) in the expression "though not re-united" (above l. 4), and by the denial implied in the restrictive affirmation *eva* (exclusively) understood in the expression "*one united* (by blood, though not by parcenery), *and not the*

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[1] This text also admits of several constructions.

[2] In analogy of the rule in *Madhyamaṇi nyâya* or the 'maxim of the central jewel' or *Kâkâkshi nyaya*—like a crow looking two ways.

[3] Upon this passage the author of the Subodhini remarks: "in like manner, a father, though not re-united with the family, shall take a share of the property of his son; and a son, though not re-united, shall receive a share of the estate of his father, from a re-united parcener" and in support of this conclusion he relies upon the passage of the *Veda*, "The husband enters into his wife, and there having transformed himself into a fœtus, the wife becomes a mother &c." (See p. 76 ll. 2–5). But Bâlambhaṭṭa refutes this (at p. 247 ll. 16–20), and he refers in the end to the Mitâksharâ itself which makes (l. 23.) its own meaning clear by adding at the end that by *it* is meant, the uterine brother.

son of a different mother" (above p. 263 l. 5), it is shown that the property should be divided and distributed to a whole brother not re-united, and a half-brother who is re-united; for the reasons of the right of succession of both subsist at the same time (and independently).

(12) This very thing is made clear by **Manu**[1] who after premising partition among re-united parceners: "If brethren, once divided and living "again together as parceners, make a second partition," declares, "should the eldest or youngest (of several brothers) be deprived "of his allotment at the distribution, or should any one of them die, his "share shall not lapse. But his uterine brothers[2], and such brothers "as were re-united and also his uterine sisters shall assemble together and "divide his share equally."

*Page 99.

(13) Thus, among re-united brothers, if the eldest, the youngest or the middlemost,–'at the distribution'– during the distribution–(for under the rule of grammar) the indeclinable termination *tas* denotes any case–*i. e.* at the time of making the dustribution—*be deprived i. e.* forfeit his share, on account of his entrance into another order, or by the offence of Bráhmicide or by any other like cause, or if he be dead, his share shall not lapse, but shall be set apart, and not that the re-united parceners shall take exclusively. This is the meaning. The Author states the appropriation of the share so set apart: " his uterine brothers shall divide it &c." That share so set apart, his uterine brothers *i. e.* those born of the same womb, even though not re-united; "having assembled together"—*i. e.* even though they had gone to a different country, still, returning thence and assembling together, they should share it; " Equally " *i. e.* not by any measure of greater or less shares. Likewise those brothers who are non-uterine (but), re-united, and also the uterine sisters, all these should divide (and take) equally. Having divided equally, they should take. This is the clear meaning.

[Colebrooke Chapter X.]

[Of exclusion from inheritance].

(1) The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener.

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[1] Ch. IX. 210-212.

[2] Colebrooke translates 'uterine brothers and sisters". The expression is *sodaryáh*, which may admit of sisters, but these have been again mentioned in the last clause.

Yâjñavalkya Verse 140.

An impotent person, an outcast, and his issue, one lame, a mad man, an idiot, a blined man, and a person afflicted with an incurable disease and (like[1]) others, must be maintained; excluding them from any share.

Mitâksharâ:—(2) *An impotent person*[2] (**klībaḥ**) *i. e.* one of the third gender. *An outcaste* (**Patitâḥ**), *i. e.* a Brâhmacide or like other, *His issue* (**Tajjaḥ**) *i. e.* one born[3] of an outcaste. *Lame* (**Panguḥ**) *i. e.* one deprived of (the use of) his feet. *A mad man* (**unmattakaḥ**)–*i. e.* one affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence. *An idiot* (**jaḍaḥ**), *i. e.* a person deprived of the internal[4] faculty: meaning, one incapable of discriminating right from wrong. *A blind man*[5] (**Andhaḥ**) *i. e.* desitute of the visual organ. *Afflicted with an incurable disease* (**Achikitsarogaḥ**)[6] *i. e.* affected by an irremediable distemper such as marasmus and the like.

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[1] *Âdya.* Colebrooke translates "as well as others (similarly disqualified)."

[2] "Whether naturally so, or by castration" Colebrooke citing Bâlambhaṭṭa. Nârada gives several varieties of impotency: see Ch. XIII 10–13 and Bâlam. p. 250.

[3] *i. e.* of one who has not performed the requisite penance or expiation (Bâlambhaṭṭi p. 250 l. 13).

It should be observed that each disability, excepting that of being an outcaste, is personal. "Each of the persons specified here is mentioned as being personally incompetent to inherit, except the outcaste, in whose case alone it has been stated that his incompetency extends to his issue". See observations at pages 282–283 in *Gangu* vs *Chandrabhagabai* 32 Bom. 275. See also *Râm Sahye Bhakut* vs. *Lalla Lalji Sahye* 8 Cal. 149 at p. 152 and note.

[4] The distinction between 'a madman' (*Unmatta*) and an 'idiot' (*Jaḍa*) is nearly the same as these words convey by their import in the English language. An *unmatta* or 'a madman' is one whose intellect has become completely overpowered by some external force or influence which has established absolute sway over his faculties. Such a man has no interval of sanity at all, while a *jaḍa* or 'an idiot' is not absolutely insane, but he is one who has become so dull in intellect, as not to be able to discriminate things which are advantageous to him from things which are of no advantage at all. (See Bâlambhaṭṭi p. 250 l. 14).

[5] The blindness referred to here, means the blindness which is congenital. See Bâlambhaṭṭi p. 250 ll. 15–16 and the judgment of Westropp. C. J. in. *Morarji Gokuldas* vs *Parvatibai* 1 Bom. 177, where the opinions of *S'astris* recorded in West and Buhler's Hindu Law on the subject are examined, as also the original texts in the *Mitâksharâ* and the *Mayukha.*

[6] *Achikitsa-roga*—a *chikitsâ* is the treatment of a disease after determining its cause &c.

(3) under the expression "Like others" (*Âdya*), are comprehended one who has entered[1] into another order, an enemy[2] to his father, a sinner in an[3] inferior degree, and a person deaf, dumb or wanting in any organ. Thus, says **Vasistha**;[4] "They who have entered into another order, are debarred from shares." By **Nârada**[5] also (has it been declared): "An "enemy to his father, an outcast, an impotent person, and one who is "a sinner in an inferior degree, take no shares of the inheritance even

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[1] The expression in the original is simply *Âs'ramantaragata*—which literally means, "one who has entered into *another* order". An *Âs'rama* is a stage or period in the life of a man, and these have been laid down as four : *viz*: (1) *Brahmacharya* or the celibate life—the life of a student; (2) *Gârhasthya* or *Gṛihasthâs'rama*, the life of a house-holder, (3) *Vânaprastha*, the life of an anchorite or hermit and (4) *Sannyâsa*, the life of absolute renunciation. Mr. Colebrooke translates as, "one who has entered into an order of devotion", but in the note the expression used by him is "another order"—and in the explanation is added—"Into one of devotion". He mentions further on as orders of devotion, the *Brahmacharya*, *Vânaprastha* and *Sannyâsa*. It would appear, however, from the expression used by *Vijñanes'wara* that the exclusion would follow as soon as a change from one order into another took place (see also Bâlambhaṭṭi p. 250 l. 18).

[2] *An enemy to his father*—the 'enmity to father' referred to here would appear to consist both of an active commission of an act of hostility, as well as in the omission of the necessary duties enjoined upon a son towards his father. *Asahâya* in his commentary on this verse of *Nârada* (XIII 21) observes : पितरं यो द्वेष्टि स पितृद्विट्। द्वेषश्च पितरि मारणादिभावः। मृते तदुद्देशेन उदकादिदानाभावरूपः।

Tr. "He who hates his father is 'an enemy to his father.' Hatred or enmity consists in the desire to kill the father or to do similar acts, as also in tne absence of a desire to offer oblations of water &c. to him after his death."

Dr. Jolly observes on this passage as follows, (Sacred Books of the East Vol. XXXIII. p. 194. N. 21).

"The Commentators are at variance as to the precise meaning of the term 'hostile to his father'. Thus the *Sarasvativilâsa* declares it to denote one who forgets himself so far as to say, 'He is not my father.' The *Dâyakramasangraha* says it means one who beats his father. According to *Jagannâtha* and the *Ratnâkara* it means 'one who attempts his father's life or commits other hostile acts against him, and who fails to offer the customary funeral oblations to his father after his death." See Colebrooke's Digest V. 4. 320.

[3] *Aupapâtikaḥ* औपपातिक Colebrooke translates this word in two different ways in §3 viz; as 'a sinner in an inferior degree' and as 'addicted to vice'. The second translation has been subjected to comment at Allahabad in *Dal Singh* vs *Musammat Dini* 32 All. 155-158. where the learned judges questioned the correctness of the reading औपपातिक itself and reference was made to Mr. J. C. Ghose's Hindu Law p. 230 where other readings are given. औपपातिक would appear to be a better reading and has been given in the *Nârada Smṛiti* edited by Dr. Jolly.

It should be noticed that the commentator on *Nârada* XIII. 21 notices अपपात्रिकः and explains it as राजावधादिदोषेण कृतषटापवर्जनः।

[4] Ch. XVII. 52.

[5] Ch. XIII. 21.

"though they be *aurasa*[1] (sons): whence (could) the *kshetrajas*". **Manu**[2] "likewise ordains: "Impotent persons and outcasts are excluded from "a share[3]; and so are persons born blind and deaf, as well as mad men, "idiots, the dumb, and those who have lost an organ[4]."

(4) *Nirindriyâḥ* (Those who have lost an organ)—any person, from whom (the use of) an organ has disappeared on account of disease or other cause, is said to have lost that organ.

(5) These persons—the impotent and the rest—are excluded from a share. They do not participate in the heritage. They must be supported by an allowance of food and raiment only. And if they are not maintained, the penalty of degradation is incurred. For **Manu**[5] says: "But it is fit, "that a wise man should give all of them food and raiment without stint to "the best of his power: for he, who gives it not, shall be deemed an outcast." "Without stint" signifies "for life."

(6) They are debarred of their shares, only if their disqualification arose before[6] the division of the property; but not one who had already been separated. **(7)** (And) if the defect be removed by medicaments or other means, even though at a period subsequent to partition, the right of participation takes effect, by parity of reasoning with the rule (in the text[7]): "When the sons have been separated, a son who is (afterwards) born of "a woman equal in class, shares the distribution."

(8) In speaking of an outcast and the rest, the masculine gender is not here used[8] restrictively. And hence, it must be understood, that the wife, the daughter, the mother, or any other (female), being disqualified for any of the defects which have been specified, is likewise excluded from participation.

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[1] Colebrooke translates—*Aurasa* as "legitimate" and *kshetrajá*—as "sons of the wife by an appointed Kinsman". The two terms have been explained by *Yâjña-valkya* and *Vijñanes'vara* while treating of several kinds of sons (see pp. 215–220 above) From a consideration of the law as stated there, it would be more convenient to use the original terms rather than their English translations.

[2] Ch. IX. 201.

[3] The original is *Anans'a* (अनंश) "without a share"—this may mean a share on partition or from inheritance.

[4] निरिन्द्रिय (*Nirindriya*) Colebrooke translates: 'those who have lost a sense (or a limb),—see however, *Vijñanes'vara's* explanation in the next paragraph.

[5] Ch. IX. 202. *Bálambhaṭṭa* observes by reference to the texts of *Devala* and *Baudháyana* that although these writers except 'an outcast and his offspring' from those entitled to maintenance, still the exception applies to those offences only which are inexpiable, and not to those with reference to which expiation is possible. See *Balambhaṭṭi* p. 250 ll. 29-35 and p. 251 ll. 1–2.

[6] *i. e.* excepting those who were disqualified for natural defects. *Bâlam.* p. 251. l. 2.

[7] Yâjñ: II. 122. (1). See above p. 199 ll. 20–21.

[8] अविवक्षित *Avivaksita* *i. e.* has been used without any special significance. That is to say the incapacity attaches to all persons alike without regard to sex.

(9) The exclusion from a share of the impotent and others[1] seeming to imply the exclusion of their sons also, the Author observes thus

Yâjñavalkya Verse 141 (1).

The aurasa and kshetraja sons, however, of these, if free from defects, are entitled to allotments.

Mitâksharâ: (10) *Of these* (**Eteshâm**) *i. e.* of the impotent and others; the *aurasa* or *kshetraja sons, if free from defects* (**Nirdoshâḥ**) *i.e.* free from defects which should bar their participation, such as impotency and the like. *Are entitled to allotments* (**Bhâga-hâriṇâḥ**) *i. e.* become rightful partakers of shares. **(11)** Of these, an impotent man is likely to have a *kshetrâja* son, the others may have the *aurasa* sons even. The specific mention of the *aurasa* and the *kshetraja* sons is intended to exclude[2] other kinds of sons.

*PAGE 100.

(12) The Author delivers a special rule concerning the daughters of the impotent and other disqualified persons

Yâjñavalkya Verse 141 (2).

The daughters likewise, of these, must be maintained until they are wedded to[3] their husbands.

Mitâkshara: (13) *Of these* (**Eshâṃ**) *i. e.* of the impotent and others, *the daughters* (**Sutâḥ**) *i. e.* the female issue, until they are initiated by marriage, so long must they be supported. Under the suggestion of the word "likewise," (*cha*) the expenses[1] of their nuptials must be also defrayed.

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[1] *i. e.* the impotent and others enumerated above in II. 140.

[2] *i. e.* along with their disqualified parents. Bâlambhaṭṭa adds (p. 251 l. 23) " A *putrikâ* also gets a share as being equal to an *aurasa* " and she too has been included in the word *aurasa*" see note further on Yâjñ. II. 142 and the observations of Chandavarkar J. in *Gangu* vs. *Chandrabhâgâbai* 32 Bom. 275 at pages 282–283 and notes.

[3] भर्तृसात्कृताः—Colebrooke translates: " (Until) they are provided with husbands. " The suffix सात् used with the root कृ means—"join to" or " consigned to " *e. g.* अग्निसात्कृत, भस्मसात् &c.

A married daughter will not be entitled to claim maintenance after her marriage. She must seek her maintenance from her husband's family. See *Bai Mangal* vs. *Bai Rukhmini* 23 Bom. 291 at p. 295.

(14) The Author adds a distinct maxim respecting the wives of disqualified persons

Yâjñavalkaya Verse 142.

The sonless[2] wives, likewise, of these, conducting themselves aright, must be supported; but such as are unchaste should be expelled, and so indeed those who are perverse.

Mîtâkshara: (15) *Of these* (**Eshâṃ**) *i. e.* of the impotent and others, *the sonless* (**aputrâḥ**) wives *conducting themselves aright* (**sâdhuvṛittayaḥ**) *i. e.* if they are correct in their conduct, *must be supported* (**bhartawyâḥ**) or maintained. *The unchaste* (**wyabhichâriṇyaḥ**), however, *should be expelled* (**nirwâsyâḥ**); *and so indeed those who are perverse* (**pratikulâstathaiva cha**) *i. e.* they deserve to be expelled. But they must be supported, provided they be not unchaste. For, (it is) not that even a maintenance must not be given solely on account of perverseness.

[**Colebrooke Sec. XI.**]

[On the separate property of a woman.]

(1) [3]After briefly propounding the division of wealth left by the hus-

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[1] The original expression is *Sanskâryâscha* (संस्कार्यश्च). *i. e.* should have the initiation ceremonies performed with reference to them. These ceremonies have been enumerated by *Yâjñavalkya* in A'châradhyâya in verses 10–12 and as regards women, he adds a special rule in 13 (2) thus :—"These rites (are performed) silently for women, their marriage however, (is performed) with Mantra texts. " See also Manu II. 26–65 ; and II. 66–67 for the '*sanskâr*' for women.

[2] Colebrooke. Tr. "childless", but the expression in *Yâjñ.* is (अपुत्रा) *Aputra* and not (अनपत्या) *Anapatyâ*

Discussing this text, among others, Chandavarkar J. has held that "the widow of a disqualified person is not excluded from inheritance, merely by her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude from inheritance. ". *Gangu* vs. *Chandrabhâbâbâi* 32 Bom. at 275.

[3] From this point begins the law regarding "a woman's property." The author of the Mitaksharâ does not appear to be inclined to lay down any particular limit to the word *stridhana.* He has distinctly laid down further on that the term *stridhana* is to be understood according to its literal meaning, and no technical significance has any scope. The introductory remarks are very significant. The author says that after having briefly described the division of wealth left by the *parents*, generally, and after having described the devolution of wealth of a male, the sage Yâñjavalkya propounds the devolutiod of wealth obtaided by a female. Taking this as it stands, and reading it in

band and wife (in the text[1]): "The sons should divide (equally both the assets and the debts) of the parents......&c.," the distribution of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it.

Yâjñavalkya Verse 143.

What was given (to a woman) by the father, the mother, the husband or a brother, or[2] received by her at the nuptial fire, as[3] also

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connection with the special remarks of Vijñaneswara about the meaning of the term *stridhana* it would adpear that according to him, all property acquired by a woman was to be regarted as her *stridhana*, and this would appear to be in agreement with the general sense in which that term is understood in Western India, or more particularly in the Bombay Prsidency. See observations of West J: in *Bhagirthibai* vs. *Kanhujirav* 11 Bom. 285 (F.B.) at p.299 also *Bhaskar Trimbak* vs. *Mahadeo* 6 Bom. H.C.R.(O. C. J.). 1 at p. 18. and the observations of Candy J. in *Gandhi Maganlal* vs. *Bai Jadab* 24 Bom. 192 at pp. 194–206. The application of the principle of *Stare decisis* to questions about the *stridhana* has worked strange results. For, whereas there may be good authority in Bengal and the allied provinces, for the proposition that 'a woman is incapable of acquiring any property', there is equally good authority for the proposition that "whatever a woman acquires is her *stridhana*"; and at least in the Bombay Presidency, not only that there would be nothing strange or new in such a proposition, but any other statement of the law would be received with surprise. By a strange conbination of events however the doctrine that a woman as a rule takes a limited estate *viz* only *durunte vivante*, has come to be engrafted upon the general law of this Presidency, and this on account of the merest accident that cases first went in appeal to the Privy Council either from Bengal or Madras, the appeals from Bombay being of a comparatively later date. The Board in England had before them questions wherein the meaning and significance of passages from the *Mitâksharâ* had to be discussed, and the conclusions once drawn, were engrafted upon deciscins and cases in other parts of India, without much regard to the accepted sense of the people of that particular province. It would thus appear that the principle *Stâre decisis* has no application in cases of this nature, inasmuchas there have been no *cases* as such to give scope for the application of that doctrine. The most recent instances of the strange results proceeding from this general interpretation of the texts for all the Prozinces will be found in the language of the judgments of *Devî Mangal Prasad Singh* vs. *Mahadev Prasad Singh* 34 All. 234 (Pc.) and *Sheo Shankar Lal* vs. *Devi Sahai* 25 All. 468-30 I. A. and *Sheo Partab Bahadar Singh* vs *Allahabad Books* 25 All.476-30 I. A. 209.

[1] Yâjñ. II. 117 p. 186 ll. 23–24.

[2] *i. e.* other than the gifts received by her and otherwise described.

[3] The original is *cha*. Colebrooke translates. 'Or.'

An *Adhivedanikas* is that kind of a woman's property, which is given to her as a solace for the grief of supersession by another wife. Yâjñavalkya has ennumerated the circumstances under which a wife could be superseded, in the Âchârâdhyâya Verse 73 and 74, and in Verse 76 he lays down a penalty for the supercession of an obedient wife, in a third of the husband's share. See for this Yâjñ. II. 148 and the Mitâksharâ thereon. See also *Subodhini* p. 71 ll. 30–31.

that which was presented to her on her husband's marriage to another wife, or any other, is denominated a " woman's property. "

Stridhan and its kinds.

(2) **Mitâksharâ**: That which was given by the father, the mother, the husband, as also by a brother ; as also that which was presented (to the bride) by the maternal uncles and the rest at the time of the wedding, before the nuptial fire ; and *that which was presented to her on her husband's marriage to another wife* (**A'dhivedanikam**), as a gratuity on account of supercession, as will be subsequently explained (in the text[1]): "let him give to a wife who has been superseded &c."; and as indicated by the word **A'dya** (any[2] other); also property which she may have acquired by inheritance,[3] purchase, partition, seizure or finding, are denominated by **Manu** and the rest "woman's property."

(3) The term *Strîdhana* ('woman's property') conforms, in its import with its etymology, and is not techinical: for, if[4] the literal sense is admissible, a technical acceptation is improper. (4) As for the enumeration of six sorts of *Stridhana* by **Manu**[5] viz: "What was given before the nuptial fire " what was presented in the bridal procession, what has been bestowed in

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[1] Yâjñ. II. 148.

[2] *A'dya*—Any other. This is a very important term in the Smṛiti literature, inasmuchas the Smṛiti writers and commentators have freely made use of it for tacking on such provisions to the existing law as they thought necessary. The word *A'dya* here, as in Yâjñ. II. 140, has been utilized to introduce provisions which were not stated in the Yâjñavalkya Smṛiti. Another term of which similar use has been made is *cha*, च, and it is under cover of this term that the ' daughter's son ' has been introduced by Vijñanes'vara as an heir. (see above page 247–67).

Derivatien

This term *A'dya*, which has sometimes been referred to as " the mysterious *A'dya* " has received so much attention from the courts and so copiously, that it is absolutely unnecessary to refer to any case. It is important, however, to note its derivation and significance. It is derived as आदौ भवः आद्यः. That which was produced first. When used in the Masculine gender it is used to express आदि the first. Other terms used are पूर्व, पौरस्त्य and प्रथम. (See Amara III. 1–80 and the Râmâśrami thereon). It indicates that the word to which it is suffixed is the first of a series consisting of others. Its use with such a word indicates cognate ideas proceeding from such a term.

[3] So according to Vijñanes'vara, wealth obtained by a woman by inheritance, &c., is her *Stridhana*, and also that the term *Stridhana* does not admit of any other meaning than can be deduced of its etymological import. (See Bâlambhatti p. 253 ll, 15–30).

[4] Cf. with this, the following three maxims which bear the same import.

(1) अवश्यापेक्षितानपेक्षितयोरपेक्षितं स्मरणीयम् ।

(2) अक्लृप्ताभावकस्याभावकल्पनापेक्षया क्लृप्ताभावकस्यैव तत्कल्पनमुचितम् ।

(3) नित्यानित्ययोर्नित्यविधिर्बलवान् ।

It is opposed to the doctrine from Jimutavâhana. See note above.

[5] **Ch. IX. 194.**

" token of affection[1] or respect, and what has been received by her from her " brother, her mother, or her father, are denominated the six-fold pro- " perty of a woman, " that is intended, not as a restriction[2] of a greater number, but as a denial of a less.

(5) Definitions of ' presents given before the nuptial fire ' and so forth have been delivered by **Kâtyâyana**; " What is given to woman at " the time of her marriage near the (nuptial) fire, is celebrated by the " wise as ' women's property bestowed before the nuptial fire ' (*Adhyagni*).

" That, again, which a woman receives while she is conducted " from her father's house[3], is instanced as the property of a woman under " the name of 'gift presented in the bridal procession, (*Adhyâvâhanikaṃ*).

" Whatever has been given to her through affection by her " mother-in-law or by her father-in-law, as also[4] what is received by her " at the time of Saluting the feet of elders is denominated 'an affectionate[5] " present ' (*Pritidattam*).

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[1] " This passage is read differently by *Ratnakara* and by *Jimuta-Vahana* (IV. 1. 4). It is here translated conformably with Balambhaṭṭa's interpretaton grounded on the subsequent text of *Kâtyâyana* (further on), where two reasons of an affectionate gift are stated: one, simple affection; the other, respect shown by an obeisance at the woman's feet. " Colebrooke

[2] Otherwise, even the six kinds enumerated by *Manu* would be contradicted by the spacific kinds enumerated by Yâjñavalkya and Narada. (See Bâlambhaṭṭi page 253 ll. 20–27).

[3] Mr. Colebrooke adds a note. "The *Ratnâkara* and *Chintamani*" read " from the parental abode." The original expression there is नीयमाना हि पैतृकात् and it would make no difference whether it is पितुर्गृहात् or पैतृकात् both the expressions having the force to indicate " the abode of her father *i. e.* the parental abode. " It may be noticed that the expressions are used in contradiction with the " husband's abode. " (भर्तृगृह). The corresponding Marâthi word माहेर would make this quite clear, the idea being that she is being carried from the house of her birth to the new house by marriage.

[4] Mr. Colebrooke mentions a reading in the *Smriti–Chandrika*—"given to her at the time of making an obeisance at her feet, " while no such reading is available either in the Sanskrit Text of the Smriti--Chandrika, or the translation by Mr. Kristna sawmy (IX. 2.) The Smriti–Chandrika simply quotes ' the text of Kâtyâyana as here and adds पादवन्दनिकं—पादवन्दनाद्यवसरे दत्तम् ' The *Pâdavandanikam* (means)—given at the time of the salutation of the feet. And the पादवन्दन is generally made by the newly married bride going for the first time to her husband's abode.

[5] See note above. The *Smriti–Chandrika* and the *Viramitrodaya* follow this reading. But the *Ratnákara*, *Chintâmani* and *Vivâda–Chandra* read " denominated an acquisition through loveliness " *Lâvanyârjitam* (लावण्यार्जितम्). Colebrooke.

"That which is received by a married woman or by a maiden, in "the house of her husband or of her father, from her brother or from her "parents,[1] is termed 'a kind gift' (*Saudâyikam*).

(6) Besides, (the Author says).

Yâjñavalkya Verse 144 (1).

That which has been 'given to her by her kindred' (bandhudattaṃ); as well as her 'fee or gratuity' (S'ulkaṃ), or anything 'bestowed after marriage' (Anvâdheyakaṃ).

Mitâksharâ: *By her kindred*[2] (**bandhubhiḥ**) *i. e.* by the *mâtṛibandhus* as well the *pitṛibandhus* of the damsel; *what has been given* (**yad dattam**) *i. e.* by these. *The gratuity or fee* (**S'ulka**[3]), that, after the receipt of which a girl is given in marriage. What *is bestowed after marriage* (**Anvâdheyakam**); following (**anu**) *i. e.* subsequently to marriage, what has been *deposited* (**A'hitam**) *i. e.* given.

(7) It has also been said by **kâtyâyana**: "What is obtained by "a woman from the family of her husband, at a time subsequent to her "marriage, is called an *anvâdheya* or gift subsequent; and so also that which "is similarly received from the family of her father."—is termed "a woman's property:" thus is this passage connected with that which has gone before.

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[1] The Bengal reading is भर्तुःसकाशात् instead of भ्रातुःसकाशात् "from her husband." See Bâlambhaṭṭi p. 254 ll. 7–8. He notices the interpretation by the 'Easterns' (प्राञ्चा) on this term and adds at the end, that this is (in addition to and) different from all the property referred to above.

[2] "Her kindred"—*i. e.* her kindred through her parents before marriage, and her kindred through her husband after marriage. These are the *media* through which 'her kindred' are to be determined. The kindred of a person—whether male or female are those who are directly related to such person individually, or mediately through others who are kindred of that person. In the case of a male the three kinds of kindred or *bandhus* have been enumerated above at p. 256. The case is somewhat different in the case of a female. For, (1) after marriage, her *bandhus* are those of the husband if the marriage be in an approved form. It is only when the marriage is in an unapproved form that her kindred are those in her own individual right and these would be her children &c. and those relations connected through her parents.

(2) Before marriage, her kindred are either her father's kindred or her mother's kindred which would again mean her father's kindred alone, unless her mother's marriage was in an unapproved form. See further on under verse 145 and also the observations of Chandâvarkar J. in *Janglubai* vs. *Jetha Appaji* 32 Bom. 409 at p. 413.

[3] Bâlambhaṭṭa (p. 254 ll. 14–15) states that according to the interpretation of *Kalpataru*, this refers to the property of a sister married under the *Âsura* form. He also states the interpretations put by *Kâtyâyana* and *Vyâsa* on the term *cha.*

(8) 'A woman's property' has been thus described[1]. The Author next propounds the distribution of it

Yâjñâvalkya Verse 144 (2).

If she pass away without issue, her kinsmen should take it.

(9) **Mitâksharâ :** *It* **(Tât)** *i. e.* the woman's property described before ; *if the woman pass away* **(Atitâyâm)** *i. e.* die; *without issue* **(aprajasi)** *i. e.* without progeny; in other words[2] leaving no daughter, nor daughter's daughter, nor daughter's son nor son, nor son's son ; the *kinsmen* **(bândhavâḥ)** *i. e.* the husband and the rest, as will be (presently) mentioned, take.

(10) The kinsmen have been declared generally,[3] to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies.

Yâjñavalkya Verse 145.

The property of a childless woman, married according to any of the four[4] forms such as the Brâhma and the others, goes to her husband ; it will go to her daughters, if she leave progeny ; and in other[5] forms of marriage, it goes to her parents.

(11) **Mitâksharâ :**—*Of a childless woman* **(Aprajasaḥ Striyâḥ)** as before[6] stated, and who had obtained[7] the *status* of a wife by any of the four modes of marriage denominated *Brâhma, Daiva, Ârsha* and Prâjâpatya, (and) who has died, the *property*[8] **(dhanam)** as before described devolves[9] in the first place on her husband **(Bhartur)**. On failure of

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[1] *i. e.* in verses Yâjñ. II. 143 and 144 (1).

See *Bai Kessarbai* vs *Hansraj Morarji* 30 Bom. 431–443 (P. C.). *Janglubai* vs *Jetha Appaji* 32 Bom. 409=10 Bom. L. R. 532. *Bhimáchârya* vs. *Ramachârya* 33 Bom. 452–456.

[2] There is a mistake in the printing of the text on page 101. Instead of दुहितृदौहित्रीपुत्रपौत्र &c. read दुहितृदौहित्रीदौहित्रपुत्रपौत्ररहितायाम्.

[3] See *Janglubai* vs *Jetha Appaji* 32 Bom. at p. 414.

[4] *i. e.* according to the first four forms which are considered as the 'approved forms' of marriage, viz. the *Bráhma, Daiva Arsha* and *Prâjâpatya.* See Mitâksharâ furthur on.

[5] *i. e.* the last four forms called the unapproved forms *viz.* the *A'sura, Gândharva, Rûkshasa* and *Pais'ácha.*

[6] *i. e.* in Yâjñ. II. 44. *i. e.* without any of the five descendants mentioned above Bâlambhaṭṭi, p. 256.

[7] *Bháryátwam pyáptâyâh* (भार्यात्वं प्राप्तायाः). Literally "who has obtained wife-hood." Colebrooke translates—who had become a wife.

[8] *i. e.* the whole property (Bâlambhaṭṭa p. 256 l. 22)

[9] *Bhartur-bhavati* (भर्तुर्भवति) Lit: " becomes the husband's (property).

him, it devolves on his nearest[1] *sapindas*. But *in other forms*[2] (**S'esheshu**) of marriage *i. e.* (those denominated), the *A'sura*, *Gândharva*, *Râkshasa* and *Paiśâcha*, *it* (**tat**) *i. e.* the property of a childless woman *goes to her parents* (**pitṛigâmi**). The words *Mâtâ* (mother) and *pitâ* (father) when combined make up the compound *pitarau* (parents). That which goes to these two is *pitṛigâmi*. Although the mother has already been indicated in the elliptical[3] compound, still her prior (right of) succession has already been[4] specifically mentioned before. On failure of them the (right of) succession is that of their[5] nearest relations[6] by propinquity.

Course of inheritance.

(**12**) Indeed in all forms[7] of marriage, if the woman *leave progeny* (**prasûtâ**) *i. e.* if she leave issue, *it* (**tat**) *i. e.* her property, *will go to her daughters* (**duhitṛiṇâm**). Here, by the term 'daughters', 'daughter's daughters' are[8] expressed; since the daughters themselves have been expressly mentioned in the (preceding[1]) text: "Of the mother's (property) the daughters (shall take) the residue &c." **(13)** Hence also, upon the death of a mother, the daughters first take the mother's property.[2] And there also, in the case of a competition between the married and the unmarried, the unmarried (take). But on failure of these the married (take). And, here also, in the case of a competition between such as are endowed[3] and those who are unendowed, the unendowed take (the succession first); and on failure of them, those who are endowed. As says **Gautama**:[4] "The *Stridhana* property goes to the daughters unmarried and (failing them) to the unendowed." Here the use of the particle *cha* (and), makes it devolve on the endowed also. "Unendowed" are such as are without issue or are destitute of wealth. **(14)** But this (rule holds) with the exception of the *S'ulka*. For, the *S'ulka* goes to the uterine brotheren only *Vide* the text of **Gautama**:[5] "The sister's *S'ulka*[6] belongs to the uterine brothers, after (the death of) the mother[7]."

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[1] Colebrooke translates, "It goes to his nearest kinsmen (*Sapindas*) allied by funeral oblations" This definition or description of a *Sapinda* may be correct under the law in Bengal. The Mitâksharâ understands that term quite differently. (See Yâjñ. I. 52. and *Lallubhai* vs *Mankooverbai* 2 Bom. 388 at p. 423. See also Telang J. in *Gojabai's* case in 17 Bom. 114 at p. 117 and *Parmappa* vs. *Shiddappa* 30 Bom. 607=8 Bom. L. R. 685. See also note 6 on page 232 above). This translation therefore of the term *sapinda* is not good so far as the Mitâksharâ is concerned, and has been criticised in several cases the most recent of which is *Nanja Pillai* vs *Sivabaggathachi* 36 Mad. 116 and cases cited there. As regards the succession of the husband's *sapindas* see *Krishnabai* vs *Shripati* 30 Bom. 333=8 Bom. L. R. 12. *Bai Kesserbai* vs. *Hunsraj Morarji* 30 Bom. 431 (p. c.) at p. 443. And generally also *Janglubai* vs. *Jetha Appaji* 32 Bom. 409 at pp. 412-413. And *Tukaram* vs. *Narayan* 36 Bom. 339 at p. 345 (F. B.)

[2] *i. e.* the remaining four called the unapproved.

[3] Called the *Ekas'esha Dwandva*. In this compound only one word is retained and the others are dropped, the one word remaining having the capacity to express the others dropped. See note on p. 248 and notes 4 and 6 on page 249.

[4] *i. e.* p. 248-249.

[5] Their. *i. e.* of the parents. see note 2 above on page 273. For a fuller discussion on the meaning of the pronoun तत् see *Tukaram* vs. *Narayan* 36 Bom. 339 (F. B.)

[6] *Tatpratyâsannânâm–Pratyâsannas* are those relations whose claim is based on propinquity. Colebrooke translates "their next of kin."

[7] *Sarvêshweva—i. e.* As regards the right of succession of the issue, they take precedence in all cases, irrespective of the particular form of marriage. But the issue or progeny here means her own issue and not the issue of a co-wife. The particular case of the succession of the daughter of a co-wife of a superior class would not otherwise have been specially mentioned. See also *Bhimacharya* vs *Venkappacharya* 33 Bom. 452, where the husband was allowed preference over a step-son. Bâlambhaṭṭa notes several readings. See p. 257.

[8] *Uchyante*—उच्यन्ते *i. e.* are expressly signified, and not merely to be inferred.

Exception-*S'ulka.*

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[1] Of Yâjñavalkya II. 117. See p. 188 ll. 30–31.

[2] *Mâtṛi-dhanam i. e.* the *Stridhana* of the mother.

[3] *Pratishthita—i. e.* well established in life, well-provided for. Comparative poverty is the only criterion in cases of competition between the married daughters, and it is not intended that an inquiry should be held going into all the minute details of income &c. See Ranade J. in *Totawa* vs. *Basawa* 23 Bom. 229. "When, however, the difference in wealth is marked, the law requires that the whole of the property should go to the poorest daughter." *Ibid*, and also cases cited on pages 252 and 253 of the report. The Un-endowd are explained further on as being those who are without issue or are destitute of wealth.

[4] Ch. XXVIII. 24.

[5] Cb. XXVIII. 25.

[6] *S'ulka*—Colebrooke translates this as "the fee or gratuity." This is in accordance with the explanation given in *Kalpataru* and quoted by Bâlambhaṭṭa on p. 254–14). आसुरादिविवाहाढोया भगिन्या धनम् Tr." "The property of a sister married according to the *Asura* or similar forms of marriage" *i. e.* the bride-price. To the same effect is Haradatta on Gautama's text. Bâlambhaṭṭa notices two other definitions or descriptions of this kind of *Stridhana* viz: those given by Kâtyâyana and Vyâsa :—*Kâtyâyana* defines it as

गृहोपस्करवाह्यानां दोह्याभरणकर्मणाम् । मूल्यं लब्धं तु यत्किंचिच्छुल्कं तत्परिकीर्तितम् ॥

Tr. "Whatever is obtained as the equivalent of household utensils, of beasts of burden, of milch cattle or ornaments, is declared (to be) *s'ulka*"; and this has also been cited in the Vyavahâra-Mayukha and Dâyabhâga IV 3. 19–20.

Vyâsa defines it as: "यदानीतं भर्तृगृहे शुल्कं तत्परिकीर्तितम् and Bâlambhaṭṭa explains it as: भर्तृगृहगमनार्थमुत्कोचादि यद्दत्तं तदित्यर्थः *i. e.* presents &c. given to induce her to go to her husband's house and thus it is very much like the *Adhyâvâhanika*. See Dâyabhâga IV. I. 6.

[7] This interpretation is according to that given in Subodhini (p. 77. l. 5). Bâlambhaṭṭi (p. 257 l. 22) and Kalpataru explain it similarly and so also Haradatta. The Dâyabhâga, however, interprets it differently. According to the Dâyabhâga first the uterine brothers &c.—and then after them and in their absence, the mother and then the father &c. take (see IV. 27–29). Bâlambhaṭṭa explains 'Mother' here, as the woman herself *i. e.* the sister herself. (See Bâlambhaṭṭi p. 257 l. 23).

Daughter's children.

(15) On failure of all the daughters, the daughters' daughters take, under this text[1]: "It will go to the daughters if she leave progeny &c."

(16) If there be a multitude of these[2] (and if they be) children of different mothers, and unequal in number, shares should be allotted to them through[3] their mothers, as directed by **Gautama**[4]: "Or, according to the mothers, let[5] the special shares (be adjusted) in each class."

Daughters' daughters.

(17) If there be daughters as well as daughters' daughters simultaneously[6], a trifle only should be given to the daughters' daughters. As has been directed by **Manu**[7] "Such of the daughters "of those (daughters) as may exist, even to those, "something[8] should be given, as may be fit, from "the property of the grand-mother, on the score of affection." **(18)** On failure also of daughters' daughters, the daughters' sons are entitled to the succession. As says **Nârada**:[9] "(Let) daughters "(divide) their mother's (wealth); or, on failure of "daughters, their male issue." For, the pronoun *it*[10] refers to the contiguous term "daughters."

Daughters' sons.

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[1] *i. e.* Yâjñ. II. 145.

[2] *Samavâya* (समवाय)—is a collecting together of persons with conflicting claims.

[3] The principle of the rule enumerated here is the same as laid down in regard to the property of a male, where several persons lay claim *through* their respective *male* ascendants, *i. e.* that laid down in Yâjñ. II. 120 (p. 196 ll. 29-30.)

[4] Ch. XXVIII. 17.

[5] *i. e.* the share of a particular claimant is to be determined by regard to the number of her sisters, as well as that of her mother's sisters. (See note above:)

[6] Here the word *Samawâya* does not predicate any claim on behalf of the daughter's daughters. It only indicates their co-existence along with the daughters.

[7]—[8] Ch. IX. 193. Kulluka holds that the grand-daughters should be unmarried. *Sarvajña Nârâyana* says, "When the married daughters are dead, their daughters shall be presented at will by their maternal uncles with the share which their mothers would have received as a token of respect." *Raghavananda* too, thinks that "on the score of affection' means 'at the pleasure (of the heirs)' But *Nandana* deduces from the same term the absolute necessity of the gift. Bühler.

[9] Ch. XIII. 2.

[10] See Bâlambhaṭṭi p. 258. The result as to the order of succession, on account of this note of the Mitâksharâ is as follows:—

"After the mother, her daughters take the *stridhana*, in the absence of the daughters, from those among her issue, the daughter's daughters take first, then the daughter's son, &c.

Jimuta-Vahana seems to have understood the pronoun *it* as referring to the word "mother". See Dâyabhâga IV 2-13.

Sons.

(19) If there be no daughters'[1] sons, sons take (the property); for it has already been declared[2]: "In their default, the (male) issue (succeed)." **Manu**[3] likewise shows the right of daughters as well as of sons to the mothers' effects: "But, when "the mother is dead, all the uterine brothers shall equally divide the "mothers' property, and also the uterine sisters." **(20)** The maternal estate, all the uterine brothers should divide equally, and also the uterine sisters should divide equally: such is the construction. And the meaning is not that 'brothers and sisters share together[4]; for, since the abridged[5] form of the conjunctive compound has not been employed, reciprocation[6] cannot be (construed to have been) indicated; the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yajñadatta also." **(21)** "Equally[7]" is specified to forbid the allotment of deductions "Uterine[8]" is used (with a view) to exclude the non-uterine.[9]

(22) The *Stridhana* of a childless woman belonging to an inferior[10]

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[1] Colebrooke translates "If there be no grandsons in the female line."

[2] Yâjñ. II. 117. (189 l. 28 above). See *Bhimacharya* vs *Ramacharya* 33 Bom. 452 at p. 456.

[3] Ch. IX. 192. The *Kalpataru* reads: *Sarve putrâḥ sahodaraḥ*. (See Bâlambhaṭṭi p. 259 l. 18.)

[4] *Sambhûya*—*i. e*. together at a time. The meaning is that the two sets of heirs viz. the uterine sisters and uterine brothers, do not take together, but that each set takes separately.

[5] See notes 3, 4. and 6 on p. 249 (*supra*) as regards the several meanings of *cha* and the characteristics of an *Ekas'esha* compound.

[6] If reciprocation were meant to be indicated in the text of *Manu*, the word *Bhrâtṛi* 'brother' would have been used, inflected however, in the dual number to denote 'brother and sister' (*Pánini* I. 2–68), or else 'childless' or some generic term, would have been employed in the plural (*Pánini* I. 2–64). But the text is not so expressed consequently *reciprocation* is not indicated. See *Subodhini* p. 77 ll. 19–25. Bâlambhaṭṭa.

[7] As has been laid down in the law regarding the property of a male *e. g*. See Yâjñ. II. 114 p. 118 suprâ.

[8]—[9] Colebrooke translates—whole blood. The expression in the text is *sodara*—belonging to the same *uterus*. The expression used by Vijñânes'wara in this same passage is *Bhinnodara*—which has been translated as *non-uterine*. Colebrooke translates as half-blood which is not sufficient. (See note 6 p. 252 *suprá*.)

[10] This is in accordance with those provisions under which intermarriages among several *varṇas* appear to have been in force. See *Yâjñavalkya* A'chârâdhyâya Verses 57, 88, 90 and Vyawahâra Verse 125.

Step-daughter.

tribe, however, the daughter of a co-wife[1] of a superior tribe, takes though springing from a different mother.

*PAGE 102.

On failure of her, her issue (shall succeed). *vide* **Manu**[2]: "Whatever "property of a woman may exist, such as had been in any manner "given to her by her father, let the daughter of a Bráhmaṇi co-wife take; "or let it belong to her offspring." **(23)** The mention of a Brâhmaṇi includes by implication (the daughter belonging to) any superior class. Hence the daughter of a kshatriyá[3] co-wife takes the goods of a childless Vaiśyá co-wife.

Sons' sons.

(24) On failure of sons, grandsons inherit their paternal-grandmother's wealth. For **Gautama**[4] says: "They, who share the inheritance, must pay the debts:" and the grandsons are bound to discharge the debts of their paternal-grandmother; for the text[5] expresses: "Debts must be paid by sons and sons' sons."

Husband and others.

(25) On falure of grandsons also, the husband and other relatives abovementioned[6] are successors to the wealth.

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[1] This word is derived as follows: समानः एकः पतिर्यस्याः सा सपत्नी—She whose husband is equal *i. e.* the same (as the other) is a co-wife. The form is based on the rule नित्यं सपत्न्यादिषु (Paníni IV. 1. 35): "In forming the feminine with the affix ङीप्, the word पति always takes the substitute न् in the words like सपत्नी and the like *e. g.* वैरिपत्नी, एकपत्नी &c. Colebrooke translates as 'a rival wife.'

[2] Ch. IX. 198. 'Her offspring' or 'issue' (Colebrooke). *Apatya* (अपत्य)—here refers to the daughters alone. See *Sarvjña Narâyana.* Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughters of a *Brâhmani* wife, and in her absence, to her offspring *i. e.* the female offspring.

[3] This inference is contested by Śrikrishna in his commentary on the *Dáya-Bhâga* of *Jimuta-Vâhana.* Colebrooke.

[4] Ch. XII. 40. *Cf.* Yâjñ. II. 51. p. 78 *ante.*

[5] See Yâjñ. II 50 p. 76 *Supra.* The two texts run thus, (1) The sons and grandsons should pay off the debts &c.

(2) Those who take the inheritance, must pay the debts. From these an inference follows that the sons and grandsons take the inheritance. (See *Subodhini* p. 77 l. 30–31 and Bâlambhaṭṭi p. 260 ll. 14-15). For such an inference, however, one more premise is wanting viz. Those who pay the debts, take the inheritance.

[6] *i. e.* in Yâjñ. II. 144.

(26) On occasion[1] of treating of *Stridhana*, the Author adds something concerning a betrothed maiden.

Yâjñavalkya Verse 146 (1).

He, who after having given his daughter, takes her[2] (back), shall be punished[3] and should also (be compelled to) make good the expenses, together with interest.

Mitâksharâ: (27) One, who *having* verablly *given* (**datwâ**) a *damsel* (**kanyâm**), *takes her (back)*-(**Apaharan**), shall be punished by the king, by regard to the amount of the property or the magnitude of the offence, and similar other circumstances. This, moreover, (is applicable) if there be no (sufficient) reason for the retraction. But, if there be good cause, he shall not be punished, since retraction is authorized in such a case (by the text[4]): "A damsel, although given, one may even take back, if "a better bridegroom presents himself." **(28)** Whatever has been expended, on account of the espousals by the (intended) bridegroom for the gratification[5] of his own or the damsel's relations, must be repaid in full, with interest, by the affiancer[6] to the bridegroom.

(29) Should a damsel, anyhow[7] affianced, die before the completion of the (marriage) ceremony, what is to be done in that case? so the Author replies.

Yájñavalkya Verse 146 (2).

If she die (after troth plighted) the bridegroom should take back the gifts which he had presented, after deducting the expenses on both sides.

Mitâksharâ: (30) If a betrothed damsel die, then, whatever had been previously given by the bridegroom such as a ring and similar other presents, the bridegroom shall take back, *deducting the expenses on both sides* (**paris'odhobhayavyayam**); the expenses of both *i. e.* of himself and of the person who offered the bride; after *deducting* (**paris'odhya**) *i. e.* taking[8] account of that, the balance (thus remaining) he may take.

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[1] *i. e.* As having a reference to the subject under discussion &c.

[2] Colebrooke translates, "For *detaining* a damsel, after *affiancing* her" &c. *datwá i. e.* having given or offered; and *haran*—*i. e.* 'taking back.'

[3] *Dandyah*—*i. e.* is liable to a penalty, which may be in the form of a fine, imprisonment or any other form of punishment. Colebrooke translates "should be fined."

[4] Yâjñavalkya I. 65.

[5] *Upachárártham* (उपचारार्थम्) *i. e.* by way of offering hospitality to.

[6] *i. e.* the parent or guardian of the bride.

[7] *i. e.* either by proper religious rites, or by taking by hands, or in any other manner. (See Bâlambhaṭṭa p. 270 l. 16).

[8] *Vigaṇayya.* Bâlambhaṭṭa considers this as a bad reading. He prefers *Vigamayya* "removing" or "discharging" (p. 270 ll. 19-20.)

What, however, was given to the damsel by the maternal-grandfather, or other relation,[1] such as the head ornament and other gifts, as well as property inherited by her in her right of succession, (all) that her uterine brothers shall take. For **Baudhâyana**[2] says: "The wealth of a deceased "damsel, let the uterine brethren themselves take. On failure of them it "shall belong to the mother; and in her absence, to the father."

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(31) It has been declared, that the property of a woman dying without issue, goes to her husband. The Author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and although she have issue.

Yâjñavalkya Verse 147.

A husband is not liable[3] to make good the property of his wife (when it was) taken by him in a famine, or for (the performance of) a religious duty, or during illness, or while under restraint.

Mitâksharâ: (32) *In a famine* (**Durbhikshe**), for the maintenance and preservation of the family. *For a religious duty* (**Dharmakârye**), which must necessarily be performed; and also *during illness* (**vyâdhau**); or *while under restraint* (**sampratirodhake**) or confinement in prison or under corporal penalties, being destitute of other funds, and therefore taking his wife's property, *the husband is not liable to repay* [**bhartâ na** [punar] **dâtumarhati**]. But if he seize in any other manner, he must pay.

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[1] Such as the paternal uncle. Bâlambhaṭṭa.

[2] Appendix B. 7 p. 125 (Leipzig Edition 1884.)

"This is a special solitary text which has necessarily to be supplemented by other texts such as those quoted in Dâyakrama (D. K. S. II. 1-2.), or from the general law of Stridhana; and where this law also fails, from the still more general law of succession (*Mitakshara* II. 11-19-25). The special rules of Stridhana succession have thus to be expressly or impliedly supplemented from Paithinasi or Nârada. (Viramitrodaya 241)" per Jenkins C. J. in *Gandhi Maganlal* vs *Bai Jadab* 24 Bom. 192 at pp. 211-212 (F. B.) See also the observations of Chandavarkar J. in *Janglubai* vs. *Jetha Appaji* 32 Bom. 409 at pp. 411-412.

[3] See Bâlambhaṭṭi (p. 270 l. 29.). There is no obligatory rule of the law that he must necessarily pay (back). Otherwise it would have been said "he should not pay."

अवश्यदेयमिति नियमो नास्तीत्यर्थः । अन्यथा न देयमित्येव ब्रूयात् ।

(33) With the exception of the husband, the property of a woman must not be taken in her lifetime by any other kinsman or heir since punishment is denounced[1] (against such conduct): "Their kinsmen, who take their "goods in their life-time, a virtuous king should chastise by inflicting the "punishment of theft." Similarly, it is pronounced an offence:[2] "Such "ornaments, as are worn by women during the life-time of their husband, "the heirs of the husband shall not divide among themselves: they who "do so are degraded from their tribe."

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(34) A present made on her husband's marriage to another wife has been mentioned as a kind of *Stridhana.* The Author describes such a present.

Yájñavalkya Verse 148.

To a superseded wife, let him give an equal sum for the supercession; (i. e.) to her to whom no separate property has been given; but if any have been assigned, let him allot[3] a half.

Mitâksharâ: (35) She over[4] (the marriage of) whom (another) marriage is contracted is a *superseded* **(Adhivinnâ).** Such a one who is a wife is a 'superseded wife'. To her, *i. e. to a superseded wife* **(Adhivinnastriyai).** *For the supercession* **(Âdhivedanikam)** *i. e.* on account of the supercession. An amount *equal* **(samam)** to what is expended on the second marriage, to such an extent should be given; to her (*i. e.*) *to whom no separate property has been given* **(yasyai stridhanam na dattam)**

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[1] Bâlambhaṭṭa ascribes this text to *Nárada*, but it is not found in the published edition of that writer by Dr. Jolly. The text is found however, in *Manu* at Ch. VIII. 29. See the observations of Medhâtithi on this verse. The *Chauradaṇḍa* (चौरदण्ड) or " punishment of theft " referred to here has been given later on by Manu at Ch. VIII. Verse 334.

[2] *Dosha*—a dereliction, a transgression: Manu Ch. IX. 200.

[3] प्रकल्पयेत् is a better reading; the reading प्रकीर्तितम् adopted in the print is not good. Bâlambhaṭṭa characterises it as a bad reading (अपपाठ), and rightly. That would necessairly require it to be in the neuter jender.

[4] *Adhivinna* is derived from *Adhi i. e.* over, and *vinna i. e.* married (from *vid* to marry) तदस्या अस्तीति. The compound is formed after the rule in Pâṇini V. 2. 127.—'अर्श आयच्'. Money which was obtained on account of the *Adhivedana* or 'Surpercession,' is the *Âdhivedanikam* under the rule तस्य तन्निमित्तम् (Pâṇini V. I. 38).

by her husband or by her father-in-law. But if any *stridhana had been assigned* (**datte**), *half* (**ardham**) the sum expended on the second marriage should be given. Here, however, the word 'half' (*ardha*) does not intend an[1] exact moiety. So much therefore should be paid as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

[Colebrooke Sec. XII.]

[On the evidence of a partition].

(1) Having thus explained the law of distribution of the heritage, the Author next propounds the evidence by which it may be proved in a case of doubt.

Yâjñavalkya Verse 149.

When partition is denied, the fact of the partition may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by (the proof of) separate possession of houses or fields.

Mitâksharâ : (2) If a partition be denied or disputed, *the fact of the partition* (**Vibhâga-bhâvanâ**) *i. e.* the certainty of the partition may be obtained by the testimony of *kinsmen* (**Jñâtibhiḥ**), *i.e.* of the *Pitṛi-bandhus*, *Mâtṛi-bandhus* such as the maternal uncle and the like, *witnesses* (**sâkshibhiḥ**) possessing the qualifications (of witnesses) as mentioned before,[2] or by the evidence of a writing *e. g.* a record of partition. It may also be ascertained by *separate* (**yautakaiḥ**) *i. e.* partitioned houses and fields.

(3) The practice of agriculture or other business pursued apart from the rest, and the observance of the five principal sacraments and other religious duties performed separately from them, are pronounced by

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[1] The word *Ardha* (half) is used here in the masculine number and therefore not necessarily equivalent to a half; it signifies a portion in general. See *Amara* I. 3. 16. *Subodhini* p. 78.

See also Bâlambhaṭṭi p. 271 ll. 19-21. Where Bâlambhaṭṭa has established that in whichever gender the word be taken, it indicatss a portion, rather *i. e.* a complement of the amount already received to make a half and not a half exactly.

[2] Yâjñ. II. 68-69, pp. 103-108 *suprâ*.

Nârada[1] to be tokens of a partition[2]: "Among unseparated brothers, the "performance of religious duties is single. When a partition has been made, "indeed the (performances of) religious duties also become separate for "each one of them."

(**4**) Similarly, other signs of previous separation are specified by the same **Author**[3]: "Brothers who are divided may perform the acts of "giving evidence, of becoming a surety, bestowing and taking gifts; but "never those who are not separated."

Thus ends the Chapter on the Distribution of heritage.

N. B. Here also ends the translation of the Mitâksharâ by Mr. Colebrooke (see Introductory note on p. 169 above).

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[1] Nârada Ch. XIII. 37.

[2] Colebrooke reads one more verse from Nârada viz. No. 36 Ch. 13 *i. e.* the one immediately preceding No. 37. It mentions additional facts proving partition. It reads thus:

विभागधर्मसंदेहे दायादानां विनिर्णयः । ज्ञातिभिर्भागलेख्यैश्च पृथक्कार्यप्रवर्तनात् ॥ ३६ ॥

Tr: "If a question arise (among co-heirs) "in regard to the fact of parti-"tion, it must be ascertained by the evidence of kinsmen, by the record of the distribu-"tion, or by separate transaction of affairs." *Bhâgalekhya*—(भागलेख्य) is a document evidencing partition. This is one of the kinds of written evidence referred to in *Abhilekhita* (अभिलेखित) in Yâjñ. II. 149 above.

Bâlambhaṭṭa gives another reading viz. भोगलेख्येन—*Bhogalekhyena.* "by occupancy and by writing" or "by a writing evidencing possession".

[3] Nârada Ch. XIII. 39.

CHAPTER IX.

On Boundary Disputes.

The Author now describes the rules for determining boundaries &c.

Yâjñavalkya Verses 150 and 151.

In a dispute about the boundary of a field, the neighbours, the elders and others, the herdsmen, the cultivators on the boundary and all persons moving in the forest (150). should determine the boundary marked by signs by means of observing the following marks *viz.* mounds, char-coals, chaffs, trees, water-embankments, ant-hills, slopes, bones, heaps of stones and similar other marks (151).

Mitâksharâ :—*In a dispute about the boundary of a field* (**Kshetrasya sîmno vivâde**) appertaining to two villages, as also in a dispute regarding the boundaries of a field falling within one village, the *neighbours* (**sâmantâ**) and others *should determine* (**Nayeyuḥ**) *i. e.* fix the *boundary* marked by signs (**upalakshitâm**) *i. e. by means of* observing *the mounds, char-coals &c.* (**sthalângârâdibhiḥ**),—the boundary marks made before. A boundary is a line delimiting a field and the like. It is of four kinds. The boundary of a country, the boundary of a village, the boundary of a field, and the boundary of a house. Each of these has generally five characteristics according to circumstances. As has been mentioned by **Nârada**[1] : " A boundary is known to be of five kinds *viz*: one "having a flag-mark, one marked by the fish, one known by a deposit, one "which is undisputed, and one created by the king's command ". " *One* having a flag-mark " (*dhwajini*) *i.* e. marked by trees &c. (standing on it), trees &c. having a resemblance to a flag-staff, as they are openly visible.

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" One marked by the fish " (*matsyini*) *i. e.* one with water in it. Because the word fish indicates (the existence of) water which is its support. " Known by a deposit " (*naidhâni*) *i. e.* one containing the fire of the husk deposited after digging, since it resembles a deposit on account of its being interred after digging. " One which is undisputed " (*bhayawarjitâ*) *i. e.* one which was created by the mutual agreement of the plaintiff and the defendant. " One created by the king's command " (*râjaśâsananeetâ*) *i. e.* in the absence of signs for recognition, created by the will of the king.

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[1] Not found in the published edition of Nârada.

Six-fold disputes.

Six varieties of dispute are likely to arise in reference to a boundary as described above: as says **Kâtyâyana** : " Excess or deficiency as to a part, existence or absolute non-existence (of the right itself), possession without previous possession by any other, and a boundary, are the six causes (that lead) to a dispute regarding land ". For, example, in a claim by some one to the effect. " My land here is more than five nivartanas[1] " an answer to the effect. " It is only five nivartanas and nothing more " it would be a dispute 'regarding excess'. Where in an assertion by a party that his land was five nivartanas, the answer is " it is not so, it is indeed less than that", it would be a dispute 'regarding a deficiency'. In an assertion by a party that his share in the land measured five nivartanas, a reply that he had no share at all, would constitute a dispute 'regarding the existence or absolute non-existence'. Where in a suit, the plaintiff asserts " This is my land and is in my possession without any one being in prior occupation " and the defendant denies it and says that possession was long and continuous, that would give rise to a dispute where 'possession without previous possession' is the point to be determined. When there is a dispute " whether *this* is the boundary limit or *that* " it is a dispute 'regarding boundary'. Thus a dispute of this kind is likely to be of six varieties. Although the six-fold dispute be regarding land, still as the boundary also is determined either under an express or implied text, (the consideration of) that has been incorporated in the chapter on 'Boundary Disputes'.

Those who belong to the neighbourhood are *neighbours* (**Sâmantâḥ**)—and these, belonging to different contiguous villages on the four sides, are residents on each (point) of the boundaries. For a text of **Kâtyâyana** declares that " A town is the neighbour of a town; a field is said to be "the neighbour of a field; a house has been indicated to be that of a house "on account of its being situated in the neighbourhood ". By the words 'a town &c', are indicated persons residing therein *e. g.* in the expression 'the town was routed'. The use of 'neighbours' is also indicative, by implication, of those contiguous to them. **Kâtyâyana** also has said: " Those who are closely contiguous are called neighbours; so also are those, "who are contiguous to these; and those who are contiguous to the "contiguous resembling a lotus in their formation."

The elders (**Sthavirâḥ**) *i. e.* old men. By using the word 'others' (*Âdayah*), are included the *Maulas* and *Uddhritas*. The definition of 'old men' and others has been given by **the Same** Author thus: " Those who "have witnessed anything being brought about, are considered as old men,

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[1] A measure of land=20 rods.

"being endowed with the qualities, of them irrespectively whether they are "actually aged or no.

"Those who lived before as neighbours and migrated afterwards to "another region, are called by the sages the, 'natives' or *Maulas* of the "place, as they had their (domicile of) origin in that place.

"Those, moreover, who, since they bring out a fact of old, as being borne "out by tradition, any act of peaceable possession and by special episodes "relating to it, are known as the *Udhṛitâs* or the antiquarians".

Herdsmen (**Gopâḥ**) *i.e.* those who tend the cows. *Cultivators on the boundary* (**Simâkṛishâṇâḥ**) *i.e.* tillers of the fields lying contiguous to the boundary. *And all persons moving in the forests* (**Serve cha vanagocharâḥ**) *i. e.* the foresters such as huntsmen &c. These, moreover, have been mentioned by **Manu**[1] *viz.* "Hunters, fowlers, herdsmen, fishermen, "root-diggers, snake-catchers, gleaners and other foresters".

A mound (**Sthalam**) a raised portion of ground, *Charcoal* (**angâraḥ**) the refuse of fire *Chaffs* (**Tushâḥ**) the coating of corns. *Trees* (**Drumâḥ**) like the fig[2] tree (Indian), a *water-embankment*, (**setuḥ**) a dam to a flow of water. *A heap of stone* (**chaitya**) *i. e.* an embankment of stone or any other material. By the use of the word 'any others' (*Âdya*) are included bamboos, sand &c.

These,[3] moreover, are of two classes according as they are visible or invisible. *Vide* **Manu**[4]: "Let him mark the boundaries (by) trees such as "the Nyagrodhas[5], Aśvatthas, Kiṃsûkas, cotton-trees, Śâlas, Palmyra palms "and trees with milky juice (246). By clustering shrubs and bamboos[6] of "different kinds, Śamis, creepers and raised mounds, reeds and thickets of "the kubjáka[6] so that the boundary (mark) will not vanish (247). Tanks, "drinking reservoirs, wells and fountains should be built on boundary "junctions, as also temples, (248)". These are visible (marks).

[7]"Having seen that through men's ignorance of the boundaries "trespasses constantly occur in the world, let him (*i. e.* the king) cause to be "made other marks of boundaries which remain hidden (249). Stones, bones, "cow's hair, chaff, ashes, potsherds, dry cowdung, bricks, cinders, pebbles, "and sand(250). And whatever other things of a similar kind the earth does

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[1] Ch. VIII. 260.

[2] *Ficus Indica.*

[3] *i. e.* the boundaries.

[4] Ch. VIII. 246-248.

[5] Nyagrodha, Ficus Indica. As'vattha—Ficus Religiosa. Kiṃs'ukaa—Butea Frondosa. S'âla-Sholea Robusta. 'Trees with milky juice' *i. e.* Arka—Calatropis Gigantea; Udumbara. (Ficus Glomerata) &c. S'ami—Acacia Suma.

[6] Bâlambhatta notices also another reading *viz. Kupyaka-gulma.* Nandapandita reads Kulyaka.

[7] Manu Ch. VIII. 249-252.

"not corrode (even) after a long time, these he should cause to be buried as "invisible signs where boundaries join (251). By these signs the king shall "ascertain the boundary (of the lands) of two disputing parties." These are (boundaries) with their marks hidden.

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By means of these visible and invisible marks pointed out by the neighbours and others, the king should determine the boundary of the two disputing litigants.

When, however, the marks do not exist, or being in existence are ambiguous by reason of the non-determination of any mark thereof, the Author lays down a rule for deciding the dispute.

Yâjñavalkya Verse 152.

Men of the neighbouring villages, or of the same village, being in number either four, eight, or even ten, having put on a garland of red flowers, and a red dress, and taking some of the earth, shall determine the boundary.

Mitâkasshara :—(Sâmantâḥ) *men of the neighbouring villages i. e.* as has been described before[1]. *Or of the same village being in number four, eight, or even ten* **(Samagrâmaschatwâroshtau das'âpi wâ)** thus being of an even number and belonging to the neighbouring villages[2]; putting on chaplets of red flowers, and clad in red garments, and with lumps of earth placed on their foreheads, shall determine–*i. e.* point out–the boundary.

The alternative suggested in the expression "Men of the neighbouring villages or" (*Sâmantâ wâ*) has a reference to the witnesses mentioned in other Smṛitis. For **Manu**[3] has said: "The settlement of a dispute "regarding boundaries shall depend on witnesses". Here therefore the decision by (means of) the witnesses is the chief course. Failing that, by the Śmantas. So it has been laid down by **Manu**:[4] "In the absence of

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[1] *i. e.* on page 286.

[2] *Samagrâmâḥ*—Both Mandlik and Borrodaile translate *Samagrâmâh* as "of the village in which the disputed land is situate". The expression simply means "of the same village", and may be interpreted as has been done by the two eminent writers named above, or may be taken as adjectival of and qualifying the *Sâmantas*, as has been done by *Bâlambhatta* (see p. 275 l. 18). Aparârka notes a different reading altogether *viz.* "सामन्ता वा समा ग्रामाः &c".

[3] Ch. VIII. 253.

[4] Ch. VIII. 258.

"witnesses, men from the four neighbouring villages, who are pure, shall "make a decision concerning the boundary, in the presence of the king". Failing these, the neighbours of these shall decide, as says **Kâtyâyana**: "When the men from the neighbouring villages are (suspected to be) corrupt "on account of personal interests, undoutedly the decision must be obtained "from men of their neighbouring villages, regard being had to the "importance of the interests at stake. When, even such neighbours are "found to be faulty, it has been laid down that the neighbours of these "should be selected; but the king, knowing well the law, should never "engage men who are vitiated."

In the absence of the Sâmantas and others, men who are natives of the place (*Maulas*) should be selected. Since **Kâtyâyana** has laid down the order: "In the absence of these, the *Samantâs*, the *Maulas*, the "Elders, the *Uddhṛitas* and like others should be selected even in the six-"fold disputes regarding immovables". These Sâmantas and others are selected according to the preponderence of their number or merit *vide* the text[1]: "The first means (to be resorted to for a decision) are the "Sâmantas, should they be free from any blemish; the next, if possessed "of good qualities should be double; and those next to them, if similarly "qualified, should be treble".

Moreover, these witnesses (referred to above), as also the neighbours and others should determine the boundary, after they are duly sworn according to the form prescribed for each; *vide* the text of **Manu**:[2] "Let "them, putting earth on their heads, wearing chaplets of flowers, and put-"ting on red dresses, being sworn each by (the rewards for) his meritorious "deeds, settle (the boundary) in accordance with the truth". The plural in (the expression) 'they should settle' is used with a view to obviate the engagement of two and not of one. Since **Nârada**[3] has permitted one to settle a boundary thus: "Should a single man undertake to fix the boundary, "he must do so after having kept a fast[4], wearing a garland of red flowers "and a red robe, and having placed the earth on his head". As for the "text:[5] "One man should not determine the boundary, though he be a "reliable person; regard being had to its importance this business should "be entrusted to a plurality of persons", and the prohibition which it contains against one, that prohibition extends to one other than that who is approved of both (the suitors), and who is conversant with law. Thus there is no conflict.

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[1] of kâtyâyana-Bâlambhatta (see p. 276. l. 2.)

[2] Ch. VIII. 256.

[3] Ch. XI. 10.

[4] Dr. Jolly gives a reading सोपवासः समाहितः "having kept a fast and in a collected frame of mind".

[5] of Narada Ch. XI. 9.

Nârada[1] has mentioned a special mode of finding out the boundary by the witnesses, the neighbours &c, even in the absence of marks such as a mound &c, thus: " When a piece of ground has been carried off by "a stream and[2] thus the boundary marks have been uprooted or destroy-"ed, (they shall fix the boundary) according to the inference to be drawn "from (an inspection of) the spot, and according to the measurements, and "according to the traces of possession " *i. e.* they should determine (the boundary), by noting in those boundary regions where a down-flowing river has carried off or washed away the marks, and which have thus either been uprooted from their place, or been destroyed (altogether). There, (the expression) 'occording to the inference to be drawn from the spot ' means according to the inference as to the old spot, the marks whereof have either been uprooted or annihilated. ' According to measurements ' *e.g.* 'The field lies on the west of this village measuring 1000 rods commencing from the village', and the like; or According to the evidence of long and immemorial possession within the knowledge of and adversely to the opponent.

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A special rule has moreover, been laid down by **Brihaspati** in this connection: " Those persons will be proper witnesses in disputes of this "nature who know the origin of the title, the evidence regarding it, the "duration of possession, the name, and also the character of the (particular) "piece of ground ".

These witnesses, Samantas and others, being sworn according to the oaths of each, should be questioned by the king in the presence of *kulas*[3] &c: As says **Mânu**:[4] " The witnesses (giving evidence) regarding "a boundary, shall be examined concerning the land-marks in the presence "of the *kulas* of the village, and also of the two litigants ". The witnesses &c, thus examined should give a unanimous decision of all together regarding the boundary.

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[1] Ch. XI. 6.

[2] Dr. Jolly interprets अपहृत, नष्ट and उत्सृष्ट as separate results following from the actions of separate agents and translates thus: "or abandoned (by the owner), or the boundary marks have been destroyed &c—":

[3] See Yâjñavalkya II. 30 and the Mitâksharâ thereon p. 56 suprâ.

[4] Ch. VIII. 254.

The boundary thus dertermined by these, together with all the marks pointed out by them, with the names of witnesses &c. specified, should be noted on a document that it may not be forgotten. It has also been said by **Manu**:[1] " As they, being examined, declare the marks of the "boundaries (to be), even so the king shall justly cause them all to be fixed "between each village.[2]"

If within an interval of three fortnights from the day of the making of (a decision regarding) the boundary, no calamity either from the king or God fall on these *i. e.* the witnesses, *Samantas* and others, then a proof of that would establish the decision as to the boundary. This interval about the calamity from god or king has been laid down by **Kâtyâyana** : " In "decisions regarding a boundary, in the case of the ordeals by *Kôśa* and "by touching the (holy) feet, the interval for (the visitation of) a calamity "from God or king is respectively three fortnights, a fortnight, and seven days."

When, however, of those who gave evidence as witnesses, any disease &c is noticed within the interval of three fortnights, or when their evidence conflicts with the testimony of witnesses other than those cited by the defendant, and who are entitled to more weight by their qualifications and number, then those (first) deserve to be punished for their false evidence. The Author states the rule as to that

Yâjñavalkya Verse 153 (1).

In case of falsehood, they should severally be punished by the king under the middling penalty.

Mitâkshorâ:—*In case of a falsehood* (**Anrite**) *i. e.* for telling a lie which was the basis of the decision, all the *Sâmantas* shall each be punished *with the middling penalty*[3] (**Madhyamasâhasena**) *i. e.* with a fine of five hundred and twenty four panas[4]. That this penal provision refers to the *Sâmantas* is inferrable from the fact that a separate provision of punishment has been made in other Smritis for the witnesses, *Maulas* &c. For says

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[1] Ch. VIII. 261.

[2] ग्रामतः is a better reading than नामतः which would read when translated: "and fixed by name".

[3] There are three grades of S'ahasas, प्रथम, मध्यम and उत्तम; see Nârada.

[4] a पण is a coin either of copper or of gold. The ordinary *Paṇa* is equal in value to 80 cowries *i. e.* about 3 or 4 pies.

Manu[1] : "If they determine (the boundary) in the manner stated, they are "guiltless (being) veracious witnesses ; but if they determine it unjustly, "they shall be compelled to pay a fine of two hundred (paṇas)." **Nârada**[2] also having laid down the middling penalty for the *Samantas* in: "Should, " however, the neighbours speak falsely, when called upon to decide "a question of this sort, they shall all be punished severely by the king, "each having to pay the fine of the middling penalty", has prescribed a punishment of the first degree for the neighbours of these. "Should the "rest of those engaged in a dispute regarding land tell a lie, these are "(considered as) sinners, and shall be punished with a fine of the first punishment ". The same punishment has also been laid[3] down for the *Maulas*, Elders &c: "The *Maulas*, the Elders and the rest shall also each "be severally punished with a penalty; they shall have to pay the fine "of the first degree, if they make false statements ". By the use of the expression *Âdi*, ' and the rest ', are included, the cowherds, bird-catchers, hunters and other inhabitants of the forest. Although, by reason of their being engaged in a sinful avocation, the use of the bird-catchers &c. is made only in pointing out the marks, and not in the actual determination of the boundary itself, still the imposition of a penalty is proper, as it is likely that a perjury may be committed even in the pointing out of the mark or sign.

The rule as to punishment laid down in "In case of a falsehood, they should be severally punished." has a reference to (statements made through) ignorance, since **Kâtyâyana** has laid down a separate punishment for those who do so by design thus: "If, of those many assembled together, "all do not declare a decision either through fear or out of avarice, they "shall be punished with the extreme punishment". Similarly, the same punishment has been prescribed by the **Same Author** in case where there is a discrepancy among the witnesses : "If there be a discrepancy among "those examined, they shall be punished with the extreme penalty. "

Having thus punished the witnesses &c. for speaking falsehood through ignorance or other cause, a fresh proceeding should be commenced for determining the boundary: For the **same Sage** having observed: "After "having punished in the case of a statement without knowledge, the "(question as to the) boundary should again be investigated ", has laid down the procedure for determining the boundary thus: " Having excluded "such of the neighbours as are (found to be) faulty, he should select others, "and joining them together with the *Maulas* &c., the king should have the

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[1] Ch. VIII. 257.

[2] Ch. XI. 7.

[3] By Nârada Ch. XI. 8.

"boundary determined; this is (the rule) known to those who are conversant "with law."

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When, however, the *Samantas* and others conversant (with the locality) or the marks do not exist, how should a decision be made? So the Author says

Yâjñavalkya Verse 153 (2).

In the absence of persons knowing, or of marks, the king should determine the boundary.

Mitâksharâ: In the absence of persons knowing, such as the *Sâmantas* and others, and also of marks, such as trees &c, *the king* himself *shall determine the boundary* (**Râjâ simnaḥ pravartitâ**) *i. e.* shall cause it to be determined. The causal is here understood. The land, the subject-matter of dispute, and lying between two villages, should be divided equally, should be assigned to the two litigants, after specifying thus: "this is the land of this man", "this land is to go to that man", and boundary marks should be made at the spot intervening between the two. When the land appears to be of immense use to one of the two litigants, then the whole land of the village should be given to him alone as says **Manu**:[1] "If the "boundary cannot be ascertained (by any evidence), the king, knowing the "law, should himself assign the land to such (of the two) to whom it would "be most serviceable. This is the law"

With a view to demonstrate the fitness of this text, even though there is no room for doubting that it is not so, the Author mentions an extension[2] of the rule (stated in the last two verses)

Yâjñavalkya Verse 154.

The same rule should be understood (to apply) in (the case of) a garden, a ware-house, a village, a watering-place, a pleasure-garden, a house, a rain-watercourse and the like.

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[1] Ch. VIII. 265.

[2] An अतिदेश is an extension or an extended application of a rule to things not directly covered by the rule itself. For explanation of this passage see Bâlambhaṭṭa. pp. 277 and 278.

Mitâksharâ: *A garden* (**A'râmaḥ**)—a piece of ground intended for growing and gathering flowers and fruits. *A ware-house* (**A'yatanam**)—*i. e.* a house, or a plot of ground set apart for storing husk or straw. *A village* (**Grâmaḥ**) is well-known. The use of a village, moreover, is indicative of a town, by implication. *A watering place* (**Nipânam**) *i. e.* a drinking place, such as a well, a pond and the like. *A pleasure-garden* (**Udyânam**) *i. e.* a pleasure-bower. *A house* (**Ves'ma**) *i. e.* a dwelling-place. In (the case of) these *i. e.* the garden &c., this very *rule* (**Vidhiḥ**) *i. e.* as characterised by the (rule about) *Sâmantas*, witnesses &c., should be known (to apply). Similarly (should be the rule) in the case of water-courses arising from excessive rain-fall *i. e.* in disputes of a kind where it is alleged that "the course of water flows by the middle (line) of these two houses or those two". By the use of the term *Âdi*, 'and the like', the same old rule should be known to apply in the case of mansions also. For **Kâtyâyana** also says: "And also in the case of a field, a well, a tank, and even a meadow, or a "garden; a house, a mansion, a resting place, the abode of a king, and "the temple of god."

Having stated (the rule regarding) the decision of a boundary, the Author states, in that connection, the punishment for destroying the boundary marks and the like (acts).

Yâjñavalkya Verse 155.

For breaking up the boundary, for encroaching beyond the boundary, likewise, and for usurping the lands, the punishments are the lowest[1], the highest and the middlemost (respectively).

Mitâksharâ : The common (plot of) land separating many fields, is a *boundary* (**maryâdâ**); for breaking that up with force, for *encroaching beyond the boundary* (**S'imâtikramaṇe**) *i. e.* for encroaching beyond the boundary and ploughing, and also for *usurping a land* by a show of fear &c., *the punishments*, respectively, *of the lowest, the highest and the middlemost* Sâhasas should be understood. The use of the word "land" (*kshetra*) here, is intended to include by implication, a house, a garden &c.

Penalties for breaking a boundary &c.

When, however, he usurps lands &c., under a mistaken notion of (the same) being his, then a fine of two hundred (paṇas) should be understood.

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[1] See Nârada Ch. XIV. for a detailed description of *Sahasas* or offences.

As says **Manu**:[1] "He who by intimidation usurps a house, a tank, a garden "or a field, shall be fined five hundred (*paṇas*); (if he does so) through "ignorance, (the fine shall be) two hundred (*paṇas*)," Having regard to the magnitude of the land or the property usurped, even the highest ammercement may sometimes he prescribed. And it is for this that it has been said[2]: "Corporal punishment, confiscation of the entire property, "banishment from the town, and branding, as well as amputation of that "limb (with which the crime was committed), is declared to be the "punishment for a *Sâhasa* of the highest degree."

Moreover, when after obtaining the permission of the owner of the field either by request or by payment of money, a man wishes to erect a dam for water, or sink a well, and if the owner of the field obstructs him, the owner himself is punishable. So the Author says

Yâjñavalkya Verse 156.

An embankment, however, producing benefit should not be prohibited, where the injury is slight; (as also) a well which occupies but little space, but has abundance of water, which deprives another of his land.

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Mitâksharâ: An *embankment* (**setuḥ**) *i. e.* the construction of a dam to a waterflow should not be stopped by the owner of the field, even though it *deprives i.e.* destroys another's land; provided that it causes little injury and is productive of much benefit (to many). A well, moreover, as it occupies a small portion of land, causes little injury, but is beneficial on account of the abundance of water (in it) should never be stopped. The use of a well, moreover, is indicative by implication, of a small-well, a water-pond and the like others. From this it necessarily follows that when, however, it occupies the whole field and thus causes much injury, or being in the vicinity of a river or similar other water-place, is productive of very little benefit it should be stopped. The two-fold character of an embankment has been mentioned by **Nârada**[3]: "There are two sorts of dykes (or

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[1] Ch. VIII. 264.

[2] By Nârada XIV. 8. The edition of Narada by Dr. Jolly reads one more line before the two quoted by Vijñane'svara. It sours thus.

उत्तमे साहसे दण्डः सहस्रावर इष्यते.

Tr. " For *sâhasa* of the highest degree, a fine of not less than a thousand (*paṇas*) is ordained, "

[3] Ch. XI. 18.

"water-courses), one called *kheyaḥ* (*i. e.* one which may be dug into the "ground), and another called *bandhyaḥ* (*i. e.* one which may be built up). "It is called a *kheya*[1] when it lets water to flow; and it is called *bandhya* "when it stops water from flowing".

When, however, any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he should do so after asking the permission of the former owner or his descendant or of the king. As says **Nârada**:[2] "If a man were to put in repair a dike erected long ago but decayed, without asking the permission of the owner, he "shall not have the (use and) profits of it (20) : When, however, the owner "is dead, and also all his human progeny, he may ask the (permission of "the) king and may set the dyke in order (21)."

The rule as to the owner of the soil has been laid down (in the last verse). Now the Author mentions a rule regarding one who constructs a dyke

Yâjñavalkya Verse 157.

If a man construct a dyke in a field without even informing the owner (of the field), a right to the produce is that of the owner and in his absence, that of the king."

Mitaksharâ : Without asking the permission of the owner of the field, or in his absence, of the king, he who *constructs a dyke in another's field* (**pârakshetre setum pravartayati**), (that man[3]) wil be entitled to enjoy the produce. For in the produce reared therein, the right of enjoyment is that of the owner of the field or in his absence, that of the king. Therefore the purport is that the permission of the owner must be obtained either by request or by payment of consideration, and in his absence, of the king, and then a dyke should be set up.

It has been said that the owner of a field should not obstruct the construction of a dyke. Now, the Author mentions another rule which has a close hearing in the same context

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[1] See Narada Ch. XI. 19. Where the necessity of both these kinds is explained. viz : too much water destroys a crop and therefore it is to be led out (*kheya*) ; so also too little causes the crop to wither, and so also water has to be stored (*bandhya*). See Bâlambhaṭṭi p. 278.

[2] Ch. XI. 20-21.

[3] *i. e.* the owner.

Yâjñavalkya Verse 158.

He who does not cultivate himself, or through another, a field, even when it was broken by the ploughshare, should be made to pay the produce obtainable from the land, and the field should be got cultivated by another.

Mitâksharâ : He, however, who having undertaken in the presence of the owner of the field "I shall cultivate this field", afterwards gives it up, nor gets it cultivated by another, then, even when that field *was broken by the ploughshare* (**Phâlâhatam**) *i. e.* was dug up a little by the plough, and therefore was not properly prepared for the production of a good crop, still of the land so dug up, the produce *i. e.* such as was likely to be produced from it as determined by the neighbours &c. should be made to be paid by the cultivator; and the field also should be taken away from the former cultivator and should be got cultivated by another.

Hear ends the chapter on Boundary Disputes.

CHAPTER X.

Of disputes between owners of cattle and their herdsmen[1].

The several titles of *Vyawahâra* are not related to each other as cause, or the thing containing the cause, and therefore, no particular order of enumeration was intended in the text[2], "Of these the first is payment and recovery of debts &c." Therefore by inverting the order (of enumeration) the Author now states the rules regarding disputes between the owners of cattle and their herdsmen

Yâjñavalkya Verse 159.

A female buffalo doing damage to the crop shall be fined eight *mâshâs* ; a cow, half of that, and a goat or a sheep, half of that.

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Mitaksharâ : A female buffalo causing damage to a stranger's crop shall be fined eight *mâshâs* ; a cow, half of that *i. e.* four mâshâs. Goats, as also sheep, shall be fined two *mâshâs*. Since the female buffalo and the rest are incapable of owning wealth, the person, who owns these is intended. A *mâsha*, moreover, is here intended to signify the twentieth part of a copper *paṇa*. For **Nârada**[1] has stated : "A *mâsha* is considered as the twentieth part of a paṇa".

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[1] See Digest Book III. Ch. IV. pp. 83-106.

[2] Manu Ch. VIII. 4 &c.

This rule moreover applies where the trespass has been without the knowledge (of the owner). When however the trespass is by design, the rule laid down in another Smṛiti[3] should be observed *viz*: "Two quarters "of a *paṇa* for a cow, and double that for a female buffalo; similarly, for a "goat, a sheep and calves, a quarter has been laid down as the fine." What however, has been laid down by **Nârada**[2] : "For (a trespass by) a cow, "he should inflict a fine of one *mâsha*, for (a mischief by) a female buffalo, "two *mâshâs*; and in the case of a goat, a sheep and calves, the fine shall "amount to half a *mâshâ*,", has a reference to crop which had ripened into sprouts, and which has been eaten up leaving only the roots.

The Author mentions a double fine in certain circumstances, having regard to the magnitude of the injury.

Yájñavalkya Verse 160 (1).

For cattle eating and lying in the field, the fine is double of that mentioned (above).

Mitâksharâ : If the cattle after eating the crop in another's field (are allowed) also (to) sleep there unwarded, then *a fine double that mentioned above should be understood* (**Yathoktât dwigoṇo daṇdo**). Of cattle, eating and lying with their calves, moreover, a fine four times that mentioned above should be understood, *vide* the text[3]: "Of those resting (there) "a double fine has been laid down, and of those accompanied by their "calves, a four-fold (*fine*)."

The Author mentions an extension of this rule in regard to other fields and cattle.

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[1] App. 58.

[2] Ch. XI. 31.

[3] of Kâtyâyana-Balambhaṭṭi.

Yâjñavalkya Verse 160 (2).

The fine for these is equal in the case of lands where grass or fuel is stored; and the fine for an ass or a camel is the same as for a female buffalo.

Mitâksharâ: Vivîtaḥ *i. e.* the portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded. In the case of a trespass upon that also, *a fine equal* (**saman daṇḍam**) to that in the case of other fields should be understood in the case *of these* (**E'shâm**) *i. e.* the female buffalo and the like. The asses and the camel (joined together make the compound expression) *an ass or a camel* (**Kharoshtram**). That should be regarded as the same as a female buffalo. Wherever and by whichever penalty a female buffalo is punished, in those places and by a similar penalty shall the ass and the camel be each severally punished. In the matter of obstructing the (growth of the) crop the ass and the camel are each equal to a female buffalo, and the fine also has been prescribed according to the extent of the injury, and thus in the compound expression '*Kharoshtram*' the conjunct compound is not intended.

For destroying the crop of another, a fine has been laid down for the owner of a cow (&c). Now, the Author states the rule according to which he should also be made to pay (the value of) the crop to the owner of the field

Yâjñavalkya Verse 161.

As much crop as may be destroyed, so much grain shall be paid to the owner of the field; the herdsman shall be chastised, but the owner of the cattle incurs the fine already mentioned (before).

Mitâkshârâ: *Crop* (**Sasya**) is used to denote generally the produce of fields. *As much* (**Yâvat**) straw, grain or the like, as is destroyed by cows or other cattle in a particular field *so much produce* (**Tâvat kshetraphalam**) shall *the owner* (**swâmi**) of them be compelled to pay the owner of the field *i. e.* according to the valuation determined by the *Sâmantas* in this form "From such land, the produce would be so much".

But the herdsman (**Gopastu**) shall only be beaten; he shall not be compelled to pay for the produce. The chastising of the herdsman, ac-

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1 वापितम्. from वप् 'to sow,' as also, 'to reap.' The latter meaning better suits the context, and therefore has been selected. See Balambhatti p. 280.

2 Digest. Vol. II. p. 100.

companied by the pecuniary fine above mentioned, must be understood to apply in the case of an injury to the crop, by the fault of the keeper, *vide* the text[1] "If a cow straying through the fault of the keeper, do "damage to the crops, no penalty is in that case exacted from the owners "(of the cattle); the herdsman (alone) is punishable (for the damage done)."

Again, the owner of the cattle incurs only the fine already mentioned, and not a corporal punishment, if the crop is damaged on account of his own fault. But in every case the produce must be made good by the owner of the cattle alone; inasmuch as he participates in the produce of the field by means of the milk obtained from female buffalos and the like, fed and fattened on the produce of the field.

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The produce, such as straw &c, remaining above the quantity consumed by the cows and the like, should be taken by the owner of the cattle alone. Since he has purchased it as it were, by paying the price adjudged by the arbitrators. And so Nârada[2] (observes): "When a man claims back "the crop consumed by cattle, that quantity of grain should be given to "him (by the owner of the cattle) which would have been produced from "the field in the estimation of the Sámantas. The chaff shall be paid to "the owner of the cattle, and the corn to the cultivator[3]."

The Author mentions an exception in the case of particular fields

Yâjñavalkya Verse 162.

There would be no trespass if without any intention (on the part of the owner) the cattle stray by a road, or in a field in the neighbourhood of the village store. But in the case of a wilful trespass he deserves punishment like a thief.

Mitâksharâ. *By a road* (Pathi) *i. e.* adjoining the village. In a field situated in the neighbourhood of the village store, if the crop is consumed by the cattle without any design on the part of the owner there would be no fault either of the herdsman or of the owner. The statement as to the absence of any guilt, is made with a view to indicate the absence of any punishment, as well as to prohibit the payment of the value of the crop.

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[1] Of Nârada: Ch. II. 35.

[2] Ch. XI. 38-39.

[3] Balambhaṭṭa adds: " *i. e.* the owner of the field is not to get anything. "

In the case of a wilful trespass (**Kâmachâre**) *i. e.* if the cattle are designedly made to stray; *like a thief* (Chauravat) *i.e.* that punishment which is meted out for a thief, such a punishment *he deserves* (Arhati).

This rule moreover is with reference to an open[1] field. Since an absence of punishment has been stated by **Manu**[2] in reference to an unenclosed field: "Where (the field containing) a crop is unenclosed, and "if cattle destroy it, the king shall not, in such a case, inflict a punishment "upon the keepers of cattle." If, however, it is enclosed, then a trespass does occur even in (reference to) a field on the roadside &c. The same **Sage** has laid down the preparing of a hedge[3] thus. "He (*i. e.* the owner of the "field) shall make there a hedge over which a camel cannot peep, and stop "every gap through which a dog or a boar can thrust his head."

The Author states another rule where there would be no penalty even in the case of particular beasts.

Yâjñavalkya Verse 163.

A big bull, beasts let loose, beasts recently delivered, straggling beasts, and like other beasts over which there is no keeper, and beasts distressed[4] by (the acts) God or the king should be set free.

Mitâksharâ:—A bull and (one which is) a big one is a *'big bull'* **(Mahoksha)** *i. e.* a sprinkler[5] of seed. *Beasts let loose* **(Uts'rishta-pas'avaḥ)** *i. e.* let loose in honour of a deity according to the rites for consecrating bulls or the like. *Beasts recently delivered* **(sutikâ)** *i. e.* within ten days of their calling. *Straggling beasts* (**Âgantukaḥ**) *i. e.* wandering away from its own herd, and coming from another (part of the) country. These should be *set free* **(mochchyâḥ)** ; should not be fined even when another's crop is consumed. Also those over which there is no keeper, even these

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[1] *i. e.* Uuenclosed.

[2] Ch. VIII. 238.

[3] Manu Ch. VIII. 239.

[4] Colebrooke interprets दैवराजपरिप्लुताः as the cause of the disturbance by the beasts and translates ; " For they are impelled by God and the king. "

[5] A bull specially reared for impregnation.

being distressed by (the acts of) *God and the King,* (**Daivarâjopahatâḥ**) *i. e.* being overpowered by God and the King shall not be punished by the owner of the field wherein the crop has been damaged.

By the use of the term *Âdi* 'and like others', are comprehended also the elephants, horses and the like. These, moreover, are mentioned by **Us'anas**:[1] "The (owners of the) elephants and horses shall not be fined; "for they are looked upon as protectors of (king's) subjects; so (also) "are not punishable beasts with one eye, or humpbacked beasts, as also "those which have been once branded. So is unpunishable a stray cow, or "a cow which has (recently) calved or which is unmanageable. So also "are the cows exempt from punishment in times of festivity, or on an anniversary day."

Here, in the case of beasts which are let loose and so are without any owner, there is no possibility of a punishment and these have been referred to as illustrative, *i. e.* as consecrated beasts cannot be punished, so a big bull and the like (should be left unpunished)

The rules as to the owner of a cow have been stated; now the Author prescribes (a rule) for the herdsman

Yâjñavalkya Verse 164.

Let the herdsman restore the cattle every evening in the same condition in which they were entrusted (to him). For such as have perished or vanished through (his) fault, he should be compelled to pay if he had stipulated for his wages.

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A rule regarding the herdsman stated.

Mitâksharâ : As the cattle were made over in the morning *by counting*, by the owner of them, in the same manner should the herdsman, in the evening time, restore the beasts after counting to the owner (thereof). For cattle perishing or vanishing *through fault* (**Pramâdena**) *i. e.* through his fault, a herdsman who *has stipulated for his wages* (**Kritavetanaḥ**) *i.e.* whose wages have been fixed , should be made to compensate the owner. The (rule for the) determination of wages has been stated by **Nâradâ** : "The annual wages "of a herdsman, for a hundred head of cattle shall be a heifer, two hundred

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[1] Cf. also Nârada Ch. XI. 38.

"for a cow, and the milk (of the whole herd) every eighth day." The loss by negligence has, moreover, been clearly explained by **Manu**[1]: "For a "beast which has been lost, or destroyed by worms, or killed by dogs or (has "died) by falling into a pit, and if no proper efforts are made, the herdsman "alone shall be made to pay." He shall not be made to pay for those which have been forcibly taken away by robbers. As says **Manu**[2] : "But "for an animal forcibly taken away by robbers, the herdsman shall not be "made to pay, provided he informed its owner at a proper time and place." Of those moreover, which have perished by (the acts of) God or the King, the ear &c should be exhibited *vide* the text of **Manu**[3]: "If cattle die, "let him carry to his master their ears, skin, tails, bladders, tendons, and "the yellow concrete bile, and let him point their particular marks."

Yâjñavalkya Verse 165.

On the loss of a beast by the fault of the herdsman, the fine ordained for him is thirteen[4] *paṇas* and a half; and he shall pay[5] the money to the owner.

Mitâksharâ : Moreover, when, on account of the fault of the keeper, an animal is killed, the keeper should be ordered to pay a fine of thirteen *paṇas* and a half ; And to the owner an amount equal to the value of the beast, as determined by arbitrators. This verse laying down the measure of the fine has not been mentioned by any one before.

While speaking of the cattle (generally), the Author speaks about a pasture-ground for cattle

Yâjñavalkya Verse 166.

By the choice of the village, or by the authority of the king, a land for the pasture-ground for cattle (should be kept). The twice-born may always take from any place grass, fuel and flowers.

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[1] Ch. VIII. 232.

[2] Ch. VIII. 233.

[3] Ch. VIII. 234.

[4] Mr. Mandlik reads twelve, instead of thirteen. This appears to be a mistake, as the original text quoted by him on page 140 gives the reading अर्धत्रयोदशपण:

[5] Mr. Mandlik translates thus: "and he should restore the thing [*i. e.* the animal] to the owner. " Apparently the word द्रव्य in the text of Yâjñavalkya has been rendered as 'the thing *i. e.* the animal.' This, however, would not suit the context, as the rule laid down in this verse is applicable when the beast is lost.

Mitâksharâ: *By the choice of the village* (**Grâmechchhayâ**) *i. e.* by the choice of the inhabitants of the village regard being had to the large or small extent of the land, or by the King's will, a cattle pasture-ground should be made; *i. e.* some good portion of the uncultivated land should be appropriated for the pasturage[1] of kine and the like.

A twice-born man, in the absence of grass, fuel &c. may, for the use of the cow, the (sacrificial) fire, and the deity, take from anywhere. the grass, wood and flowers (respectively) without opposition, as if (they were) his own. But fruits, he should take from an unenclosed spot only, *vide* the text of **Gautama**[2]. "For the cow and the sacrificial fire, he may take "as his own, grass and fuel, as well as the flowers of creepers and trees, and "fruit also, if they be unenclosed."

This, moreover, supposes pre-occupancy; for, should a thing be unoccupied, property also vests by occupancy in others besides twice-born men, as has been declared by the **same**[3] **Author**:" "A man becomes owner by inheritance, purchase, partition, seizure, or finding."

As for what is again said in the text[4]. "He indeed, who seizes grass "or wood, or flowers or fruits without asking (permission of the owner) "deserves (the punishment of) the amputation of his hand", it applies to persons other than the twice-born, or where there is no distress, or implies a purpose other than that of (feeding) the cows &c.

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Here is another rule being propounded to provide for the convenience of cows and other cattle for standing, sitting &c.

Yâjñavalkya Verse 167.

A space of one hundred *Dhanus*[5] in extent should be left between a village and the fields; of two hundred, for a small town; and of four hundred, for a city.

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[9] Balambhatta notices a different reading. च रक्षणार्थम् *i. e.* for the protection of cattle.

[2] Ch. XII. 25. in Anandasrama No 28. Vol. II. Part I. Sacred books of the East p. 241.

[3] Ch. X. 31.

[4] Of Narada—Balambhatta. Colebrooke assigns it to *Gautama* See p. 90 Dig. II.

[5] A *Dhanus*=a pole of four centests.

Mitâksharâ: The space to be left between a village and its fields should be, one hundred *Dhanus* in extent on all sides, exempt from tillage. *Round a small town* (**Kharvaṭasya**) with abundant thorny bushes growing in continuity around it, the extent of the space should be two hundred. *Round a city*, (**Nagarasya**) with the concourse of an immense population, the intervening space should be, by measurement, more than four hundred *Dhanus*.

Thus ends the chapter regarding ' Disputes between the Owner and Keepers of cattle.'

CHAPTER XI.

Of Sale without Ownership.

Now the Author introduces the chapter from Vyawahára called "Sale without Ownership." The characterstics of the same have been mentioned by **Nârada**[1]: "When a thing kept as a deposit, or the property of a "stranger lost (by him), and found (by another man), or stolen articles are "sold behind his back, it should be considered as a sale (effected) by "another than the (rightful) owner."

In such a case what should be done ? So the Author says

Yájñavalkya Verse 168.

The owner can recover his own (property) sold by a stranger ; the blame would be of the buyer if he buy not publicly. If he purchase from a very low man, in secret, at a very low price, and at an unusual time, he is (considered as) a thief.

Mitâksharâ: *His own* (**swam**) *i. e.* property belonging to himself; *sold by a stranger* (**anyavikrîtam**) *i. e.* sold by one not the owner; if he sees it, then he *can recover* (**labheta**) *i. e.* he should take it. Since the element of ownership is absent in the sale by one who was not the true owner. The expression "things sold" has been used to indicate by implication 'things given or deposited'. For these transactions are also similar (in nature) to a sale by one not the owner. And hence has been said[2]: "A sale, a gift or a pledge made without ownership should be "rescinded."

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[1] Ch. VII-1.

[2] By Kâtyâyana—Bâlambhaṭṭâ.

The purchaser, moreover, becomes blameworthy if he buy *not publicly* **(aprakâs'ite)** *i. e.* if he make the purchase in secret. So, if *from a very low man* **(Hînât)** *i. e.* from one who cannot account for the acquisition of the thing by him, *in secret* **(rahasi)** *i. e.* in a lonely place, not ordinarily resorted to; *at a very low price* **(hînamûlyena)** *i. e.* at a price lower than the original (price) of the thing itself, and *at an unusual time* **(velâ-hîne)** *i. e.* at a time which is other than the proper time, (if) he make a purchase, (*e. g.*) at night or such other time, then in such a case, the purchaser *is* (considered) *a thief* **(Taskaraḥ)** *i. e.* becomes liable to punishment like a thief. As has been said[1]: "When a thing which had been sold by another than the owner, "has been recovered by the owner, he may keep it. One purchasing openly "is blameless; but a clandestine purchase is equivalent to a theft by the "purchaser."

What should be done by the purchaser when charged by the owner? So the Author says

Yâjñavalkya Verse 169.

Having found goods lost or stolen, he should cause the taker to be apprehended. If time and place prevent (it), he shall himself apprehend, and hand him over.

Shrikara's interpretation.

Mitâksharâ: A thing lost or stolen, belonging to another having got by sale or otherwise, (the purchaser) should *cause the robber* **(hartâram naram)** *to be apprehended* **(grâhayet)** by persons expert in detecting thieves, for his own exhonoration, as well as for the enforcement of the king's penalty. If, however, he has gone to an unknown region or is dead in course of time, and it is not possible to get at the original thief, then even without producing the seller, he should himself make over that thing to the owner who had lost it. And he is discharged from all liability by doing so much. Thus has (this text) been explained by the venerable **S'rikara**

But it is improper. For, having regard to the text "When the seller in pointed out there is exhoneration" there would be the fault of repetition. So this text is explained otherwise.

The portion of the text "(having found) goods sold, stolen &c." is a course prescribed for the owner of the lost thing. (Thus) *Having found*

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[1] By Nârada-Ch. VII. 2.

(**Âsâdya**) *i. e.* recognised a thing while the same as in the hands of the purchaser, which belonged to himself, and which was either lost or stolen, he should cause *the taker* (**hartâram**) *i. e.* the seller to be apprehended by the police or others. *If time and place prevent* (**Des'akâlâtipattau**) *i. e.*

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if there is (danger of) waste of time, *i. e.* if there is danger of his running away even before the time a complaint is made to the police on account of their not being near, *he shall himself apprehend* (**swayameva grihîtwâ**) and *hand over* (**samarpayet**) to them.

What should be done after the robber is apprehended? So the Author says

Yâjñavalkya Verse 170.

When the seller is pointed out, there is exhoneration. The owner receives his thing; the king, the fine; and the buyer his price back, from him who sold it.

Mitâksharâ:—If such a buyer, when apprehended says 'I have not stolen it, but I have purchased it from another', then he *i. e.* the buyer is exhonerated merely by pointing out the seller. And then he will not be charged (as a party defendant); but the suit will proceed between the seller pointed out by him and the owner who had lost the thing. As says **Brihaspati**: "When the original taker is produced, the buyer should "in no case be sued. But a suit is ordained between the original taker "and the owner who had lost the thing." In that suit, if it is determined that a sale was made by one who was not the owner, then the man *who sold* (**vikretâ**) *i. e.* the seller *of it* (**tasya**) *i. e.* of the thing lost or stolen, such as a cow &c,—from him the *owner i. e.* the one who had lost the thing will get back his *thing* (**drawyam**); and the king also a fine proportionate to the (degree of) offence, and the buyer also will obtain the price (paid by him).

If, however, he happens to have gone to another (part of the) country, time should be allowed for his production, regard being had to the number of Yojanas[1] (lying between): *vide* the text:[2] "Either the purchase should

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[1] A Yojana is 4 koss=8 miles.

[2] Of Kâtyâyana. Bâlambhattâ.

"be made in open (market), or the original seller should be made over. "In such a case, time should be given to him (*i.e.* the buyer) for the production of the original seller according to (the distance of) the road." When, however, he is not able to produce the original seller on account of his not knowing the place (where he has gone), then he becomes exhonerated only upon justifying the purchase, *vide* the text[1]: "If the seller "cannot be produced, the buyer should be made to justify the purchase." When, again, he does not justify the purchase either by (the testimony of) witnesses or by an ordeal, nor does he point out the original seller, then he himself becomes liable to punishment. *vide* the text of **Manu**[2]: "The "defendant not pointing out the original seller, nor justifying the purchase, "should be ordered to pay the amount to the claimant as claimed by "him, and also to pay a fine."

It has been said that "The owner can recover his own (when) sold by a stranger," What should be done by one who wishes to recover it ? So the Author says

Yâjñavalkya Verse 171.

Proof of a thing lost must be made by the evidence of the source of acquisition, or of possession; otherwise, on failure of proof by him, he should be made to pay the king a fine equal to the fifth part.

Mitâksharâ : *By source of acquisition* (**Âgamena**) *e. g.* by inheritance purchase or the like, or also *by possession* (**Upabhogena**) *i.e.* by proof thereof *e. g.* "This was my property and the same was lost and recovered &c" must be made (**bhâvyam**) *i.e.* established by the owner of it. *Otherwise*, (**anyathâ**) *i. e.* if the owner do not make out (his case), *a fifth part* (**punchabandho**) *i.e.* a fifth portion of the lost thing, should be paid by the owner of the lost thing as fine to the king.

Here, moreover, the order (of proof) should be as follows : The original owner, should prove the thing (claimed to be) lost as being his. Then the purchaser, in order to obviate the charge of theft, as also that he may get (back) the price (paid by him) should produce his seller. If, however, he is unable to produce him, then for exhonerating himself from any charge, he should justify the purchase, and make over the thing (which was) lost to the owner.

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[1] Of Kàtyâyana-Bâlambhaṭṭâ.

[2] Not found in Manu. The Author of Mayukha assigns it to Kâtyâyana,

The Author mentions a rule regarding one who shields a robber

Yâjñavalkya Verse 172.

He who receives from the hand of another, a thing stolen or lost, without informing the king, shall be fined ninety-six *paṇas.*

Mitâksharâ: *A thing stôlen or lost* (**Ṛhitam pranashtam)** and lying in the possession of the thief &c., he who takes it back forcibly or by similar means saying 'this man has stolen my thing', without informing the king, such a one shall be fined six and ninety paṇas; as he becomes guilty by shielding the thief.

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The Author mentions a rule regarding a thing recovered by the king's officers

Yâjñavalkya Verse 173.

A thing which was lost or stolen, and which had been recovered by the customs officers or by the watchmen, the owner may take away within one year, (and) after it, the king.

Mitâksharâ: When, however, a thing lost or stolen, has been produced before the king by the officers of customs, or by the watchmen of the place, then, if the owner of the lost thing appear within the period of one year, he shall get the thing (back). After the lapse of one year, however, the king shall take it.

The king also should cause a proclamation to be made among the people, about the thing brought by his officers, and preserve the same. As says **Gautama**:[1] "Those who find lost (property) the owner of which is "not known, shall announce it to the king. The king shall cause it to be "proclaimed, and hold it in his custody for a year." As for the other rule stated by **Manu**:[1] "Property, the owner of which has disappeared, the "king shall cause to be preserved as a deposit for three years; within the "period of three years, the owner may claim it, after that the king may take "it"; it refers to the property of a Brâhmaṇa who is moreover well-versed in the Veda and is of good conduct. The deduction of a sixth part has been stated by the **same Author**:[2] "Now the king, remembering the duty of "good men, may take one-sixth part of property lost and afterwards found, "or a tenth, or at least a twelfth." The sixth and other parts should be understood to be recovered (according as the thing is claimed) during the third, second, or the first year respectively[3]. This moreover has been explained before.

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[1] Ch. X. 36-37.

The Author mentions an exception to the rule stated by **Manu** regarding the retaining of a sixth or other part, in the case of particular chattels

Yájñavalkya Verse 174.

The owner of a beast having single hoofs, should pay four *paṇas*, five for men, and two each for a buffalo, camel, or a cow; and a fourth each for a goat or a sheep.

Mitâksharâ: An animal *having a single hoof* (**Ekas'aphe**) *i. g.* a horse &c, if lost and found again, its owner should pay the king as a fee for its protection four paṇas. *For men* (**Mânushe**) *i. e.* if the thing be a human being, five paṇas. For *a goat or a sheep* (**ajâvike**), however, one-fourth (of a paṇa) for each. For a buffalo, a camel, or a cow, as charges for protection, he should pay two paṇas for each head. Thus is the rule to be construed in reference to all. Although the goat and the sheep are mentioned together in a conjunct compound (**ajâvikam**), still, by the force of the repetition in the expression 'one-fourth, one-fourth each' the meaning deducible is that it refers to each individually.

Here ends the chapter on "*Sale by* One Not the Owner."

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[1] Ch. VIII. 30.

[2] Manu Ch. VIII. 33.

[3] Bâlambhaṭṭâ explains that the order here referred to is inversely to the original enumeration, so that for the first year $\frac{1}{12}$ part, 2nd year $\frac{1}{10}$th. and for the third year $\frac{1}{6}$ part may be taken.

CHAPTER XII.

Of the Resumption of Gifts.

Now is being expounded the Chapter of Law called Gifts, which has obtained a twofold designation *viz.* the resumption of gifts, or non-resumption of a gift, according as the parties concerned resort to ways which are proper or improper. Its characterestics have been stated by **Nârada**[1]: "When a man wishes to take back a thing which he has not properly "bestowed, it is called a resumption of gifts, a title of law." That title of law wherein having bestowed a chattel *not properly* (*asamyak*) *i. e.* by means not laid down as proper, a man wishes to recover it back, (that title) is called " Resumption of Gifts' *i. e.* that transaction of gift where there is resumption of that which had been given. And by having resort to legally prescribed methods, its converse in the same title at law comes to be known as non-resumption of gifts. That title at law called the law of gifts in which there is non-resumption or non-retaking of what had been given is called, the non-resumption of gifts. That moreover is fourfold having regard to its division into what may be given and what may not be given: As says **Nârada**[2]:

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"What may be given, and what not, valid gifts, and invalid gifts; thus "the law of gifts is declared fourfold in judicial affairs." There, by ' What may be given' (*deyam*) is expressed to be that which can be a fit subject-matter for an unforbidden transaction of gift. By 'What may not be given' (*adeyam*) is indicated that which is unfit to be given either on account of its being not one's own property, or its being prohibited (as a thing to be given). That, on the other hand, which had been given by one in full possession of his faculties and which cannot be revoked, is called 'a valid gift' (*Dattam*). And 'an invalid gift, (*adattam*) is describled to be that which may be taken back. With a view to describe this in brief, the Author says

Yâjñavalkya Verse 175.

One's property may be given, without detriment to the family.

Mitâkshara: *One's property* (**swam**) *i. e.* his own, *without detriment to the family* (**Kuṭumbâvirodhena**) *i. e.* without an impediment to the family *i. e.* so much only should be given as may remain after (providing for) the maintenance of the family. Since its maintenance is a necessity. For says **Manu**[1] "Aged parents, a chaste wife, and an infant son, should "be maintained even by doing a hundred misdeeds; so said Manu." "Without detriment to the family"–By this the Author points out one class of things which may not be given. "One's property one may give"–by this also, the unendowable character of the five kinds of property *viz.* the Anvahita[2] and Yâchitaka deposits, as well as a pledge, a joint property, and a Nikshepa deposit has been indicated by the method of negative[3] reasoning. As to the eightfold character of things not liable to be given which has been mentioned by **Nârada**[4]: "An Anváhita deposit, "a Yáchitaka, a pledge, joint property, a deposit, a son, a wife, the entire "property of one who has offspring (4). These dave been declared by the "revered sages as inalienable even in times of exreme distress; as also that "which had been promised to another (5)." This text only intends things which are inalienable; it has not been based on the absence of the right of ownership, as the right of ownership exists over a son, a wife, the entire property, and that which had been promised. The nature of Anwáhita and the rest has been already explained before[5].

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[1] Ch. IV. 1.

[2] Ch. IV. 2.

The right of ownership being undefined in the text "One's property he may give", an occasion might arise for the giving away of a wife and a son and the like. With a view to obviate this the Author says

Yâjñavalkya Verse 176.

Except a wife and a son. Nor, when there is progeny, his entire property ; as also what had been promised to another.

Mitâksharâ : *Except a wife and a son* (**Dârasutâdrite**[6]) *i.e.* excluding the wife and the son, he should give his own property; and not a wife or a son. This is the meaning. Similarly, when the son, grandson and similar *progeny* (anvaye) exist, the entire property he should not give; *vide* the text[1]: "Having begotten sons, he should duly initiate them, and "provide for the maintenance of these." So also, gold &c., when promised (to be given) to another, should not be given to any other.

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[1] Not found in the printed edition of Manu.

[2] See page 101 above for an explanation of these terms as given by Vijñanesvara himself.

[3] The व्यतिरेक method of reasoning *i. e.* by an opposite way. See note 2 page 34 above for a fuller explanation of this term and also of the corresponding term अन्वय. The meaning is that by saying that one should give what is "his own property", a necessary implication is raised against the gift of things which are not held in the right of full ownership, *i. e.* over which the donor has only a partial right.

[4] Ch. IV. 4–5.

[5] *i. e.* on page 101 above.

[6] See *Kalgavda* vs. *Somappa* 33 Bom. 669 at pp. 674, 687, where Chandavarkar J. has discussed this passage and its bearing upon the relative rights and positions of a son and a father in a Mitaksharâ family.

Having thus mentioned property which may be given, with the exception of a wife and a son, the Author mentions in that context, the rule that property which is not alienable should be accepted by the donee in public

Yâjñavalkya Verse 176 (1).

[2]Let the acceptance be public, especially of immovable property.

Mitâksharâ : Taking over is *acceptance* (**Pratigrahaḥ**). That should be made *in public* (**prakâshaḥ**) with a view to obviate any dispute. And *especially of the immovable* (**Sthâwarasya cha vis'eshatâḥ**), the acceptance should be made only in public. As it is not possible to prove its possession (by the donee) as can be done in the case of gold and other movables.

Having thus referred to a subject which only arose incidentally the Author proceeds further with the subject under discussion

Yâjñavalkya Verse 176 (2).

[3]Whatever is promised (to be given) shall be given : Having once given (it), let him not resume (it).

Mitâksharâ: (Deyam pratis'rutam chaiva) Whatever has been promised to any one as a religious charity, must necessarily be given to him, if[1] the other does not swerve from (the path of) religion. If he swerves, then it should not be given. As **Gautama**[2] has stated: "Even if he may "have promised, he should not give it to one who has unlawful associations".

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[1] Of Manu—Bâlambhaṭṭa.

[2] See *Harjivan* vs *Naran* 4 Bom. H. C. R. A. C. I. 31 at p. 34 and also *Kâlidas* vs. *Kanhya Lal* 11 I. A. 218 at p. 230 where this passage has been translated by the court.

[3] See *Ghelabhai* vs. *Uderam* 36 Bom. 29 at p. 35, where Chandavarkar J. has translated this passage.

What had been given let him not resume it (**Datwâ nâpaharet punaḥ**). From this it follows that whatever has been completely given according to law, should not be resumed in (the case of) all the seven classes (of valid gifts). But should be confirmed in that condition; but also that, what had

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been given in an illegal manner must be resumed in (the case of) all the sixteen kinds of invalid gifts.

Nârada[3] also having premised that "Valid gifts are of seven kinds, and invalid gifts of sixteen kinds" has dealt with the characteristics of valid and invalid gifts thus: "The price paid for merchandise, wages, "(a present offered) for an amusement, (a gift made) from affection, or from "gratitude, or as a woman's[4] S'ulka and a respectful gift, are the seven kinds "of valid gifts" (8).

Invalid gifts are the following (sixteen): "What has been given by "one under the influence of fear, anger, sorrow, sudden excitement, or "pain; or as a bribe, or in jest, or fraudulently, under false pretences; (9) "Or by a child, or by a fool, or by a person not his own master, or by "one distressed, or by one intoxicated, or by one insane; or in considera- "tion of a reward thinking "This man will do me some service (10); "and also that which was given to an unworthy person thought to be "worthy, or for an unlawful purpose; whatever gift has been made through "ignorance (of real facts) is considered as an invalid gift".

The meaning is this: What has been paid as "the price for merchandise" *i. e.* a thing bought. "Wages" *i. e.* the salary paid to one who had done work. "For amusement" *i. e.* given to the bards, singers and the like. "From affection" *i. e.* given to daughters, sons and the like. "From

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[1] This translation differs from that given by Chandavarkar J. in 36 Bom. at p. 35. The translation given there is obviously not in conformity with the text of the Mitâksharâ, which makes it a condition precedent for the completion of the gift, that the donee should not swerve from religion.

[2] Ch. IV. 23.

[3] Ch. IV. 8-11. See *Harjivam* vs. *Naran* 4 Bom. H. C. R. A. C. J. at p. 33.

[4] See p. 276 ll. 12-16 and note (6).

"In jest" *i. e.* what has been laughingly given. Even (when) one man gives his own property to another and that other also gives his to him. This is "a fraudulent gift."

gratitude" *i. e.* to one who has conferred any obligation; given by way of repaying the obligation. "A woman's S'ulka" *i. e.* that which was given to the relations of a damsel for (bringing about the) marriage. And "a respectful gift" *i. e.* what was given and the result of which is not[1] observed (in this world). These seven kinds of gifts are valid gifts, and must not be resumed.

[2]" Through fear " what was given to the keepers[3] of prisoners &c. "Under the influence of anger " *i. e.* what was given to another (as an inducement) for removing his enmity towards sons and the like. What was given in pangs of grief caused by the separation of a son or a similar cause. [4]" By way of a bribe" *i. e.* given to persons in authority for the removal of obstruction to (one's) business. " Under a false pretence" *i. e.* (where) intending to give one hundred, he stipulates for a thousand and gives. "By a child " *i. e.* by one who has not attained the age of sixteen. "By a fool" *i. e.* by one who is ignorant of the popular usage. " By one who is not his own master". *e. g.* by a son, a slave or the like. "By one distressed" *e. g.* by one diseased &c. " By one intoxicated " *i. e.* by one intoxicated by some intoxicant. "By one insane" *i. e.* by one who is overpowered by an insanity such as that brought on by air &c. " Given in expectation of a return " *e. g.* (where a gift is made in the expectation that) ' he will do my business'. Given to a man who is not versed in (all) the four Vedas, on his representing that he was versed in the four Vedas. Given to one, who having obtained a gift on his respresenting that he would perform a sacrifice, but who appropriates it in gambling and similar other acts. Gifts of these sixteen kinds as enumerated above are invalid even if they were (completely) made; since these can be resumed.

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[1] *i. e.* not having tangible results in this world.

[2] For a lucid explanation of the quotation from Nârada see Asahâya's commentary of Nârada on this passage and translated by Dr. Jolly at pp: 129–130 (notes) of Vol. XXXIII of the Sacred Books of the East.

[3] This term is indicative of persons of dangerous character, such as rogues, ruffians &c. Asahâya explains it as follows:—"*e. g.* if an honest man promises one hundred drachmas to a ruffian who addresses him, while he is passing through a forest, with the words, "If thou givest me one hundred drachmas, thou shalt live. Otherwise thou shalt die."

Bâlambhaṭṭa suggests as an example, gifts promised or given to the jail officers &c.

[4] See *Shri Sitaram Pandit* vs *Shri Harihar Pandit* 35 Bom. 169 at p. 180 per Chandavarkar J. where this passage has been translated differently thus : 'Something paid to a person bound to do an act, with the object of removing an obstacle to the performance of his duty." While Vijnânesvara's explanation obviously refers to a gift made to a person in authority, with a view to removing all obstructions to the successful termination of the matter under consideration. To the same effect is Asahâya.

The invalidity of a gift made by 'one distressed', attaches to such as are other than those relating to religious purposes: Since **Kâtyâyana** has observed: "If a gift[1] be promised by a person whether in health or "in distress, for a religious purpose, and he die without making it, his "son should be compelled to make it good; of this there is no doubt." Moreover, here is another text which is expressed in a concise form, but which is common to all (kinds of) disputes: Says **Manu**[2]: " A fraudulent pledge "or sale, a fraudulent gift, acceptance, and any transaction where he "detects fraud, he (*i. e.* judge) shall annul the whole of such (transac-"tion)." *Yoga* means fraud. The meaning is, that by every kind of fraud intended to be practised (in future), (if) the transaction of pledge, sale, gift or acceptance &c. were brought about, upon the discovery of that fraud, these transactions of sale &c should be declared null and void. For him, moreover, who accepts any of the sixteen invalid gifts, and also for him who bestows any of the seven kinds which ought not to be given, a penalty has been declared by **Nârada**[3]: " He who accepts an "invalid gift through avarice, as also he who bestows one which ought not "to be given, the donor of the unendowable thing deserves punishment, "as also the acceptor of the invalid gift".

Here ends the chapter on the Resumption of Gifts.

CHAPTER XIII.

Rescission of Purchase.

Now is being described the 'Rescission of Purchase.' Its nature has been described by **Nârada**[4]: "Where a purchaser, after having purchased

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"(an article) for a price, does not approve of it, that is termed a 'Rescission

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[1] See *Ghelabhai* vs. *Uderam* 30 Bom. 29 at p. 35. Where Chandavarkar J. observes, "The word son is here merely illustrative and stands for any one who inherits or takes the promisor's property. These are monitory, not mandatory texts; but the principle underlying them is that, where a Hindu, who has directed a trust of his property for a religious purpose, dies before giving effect to it, Hindu Law authorises his heir to take steps for carrying out his directions, after recovering the property from a trespasser".

[2] Ch. VIII. 165.

[3] Ch. IV. 12.

[4] Ch. IX. 1.

"of Purchase' a title of law." There also, the **same Author**[1] has stated that on the day on which the purchase was made, the thing should be delivered back on that same day without any change: "When a "purchaser, after having purchased an article for a price, considers that he "has made a bad bargain, he must return it to the vendor on that same day "in an undamaged condition." In the case of a return on the second or any subsequent day, a special rule has been mentioned by the **same sage**[2], "When the purchaser returns it on the second day, he shall lose a thirtieth "(part) from the price; twice as much (if it be returned) on the third day. "After that time, it is absolutely the purchaser's." The meaning is that thereafter a rescission should not be made. This (rule) moreover, has a reference to things perishable by use, other than seed and like other things.

In the case of the purchase of seed &c., an entirely different rule prevails as to rescission. So the Author says

Yâjñavalkya Verse 177.

The time (allowed) for the trial and examination of seed, metal, beasts of burden, jewels, females, milch-cattle, and of males is respectively, ten days, one day, five days, seven days, one month, three days, and half a month.

Mitâksharâ: *Seed* (**Bîjam**) *i. e.* seed of paddy and other grain. *Metal* **(Ayaḥ)** such as iron. *A beast of burden* **(Wâyhaḥ)** *i. e.* a bullock and the like. *Jewel* **(ratnam)** *i. e.* pearls, corals &c. *A female* **(stree)** *i. e.* a female slave **(Dâsi)**. *Milch cattle* **(Dohyam)** *e. g.* a she-buffalo. *A male* **(Pumân)** *i. e.* a male slave. Of these, *i. e.* of the seed and the rest, the period for trial and examination should be understood to be ten days &c. respectively in the order of (their) enumeration. And when, while under trial and examination, there occurs a repentance on account of the badness of the thing (purchased), then the sale can only be rescinded within ten days, and not later than (that period). And this is the reason of this rule.

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[1] Ch. IX. 2.

[2] Ch. IX. 3.

As for the text of **Manu**[1]: "If anybody in this world after buying or "selling anything, repent of his bargain, he may return or take back that "chattel within ten days": that concerns things not liable[1a] to destruction by use such as a house, a field, a vechicle, a bed, a seat and the like, excepting iron and the other things with regard to which the rule has been stated (as above).

Moreover, all this has a reference to what is bought without an examination. What therefore had been examined[2] and then purchased after an agreement that it is not to be returned, should not be returned to the seller. That rule has been laid[3] down thus: "The (intending) purchaser "shall first examine an article *i. e.* (before purchasing it), having regard "to its faults and excellences; that which has been approved by the pur-"chaser after a close examination, cannot afterwards be returned to the vendor."

While treating of the (time for) inspection of milch cattle &c., the Author states the rule regarding the examination of gold and the like also

Yâjñavalkya Verse 178.

Gold is not reduced in fire; in (the case of) silver it is reduced by two *palas* **in a hundred; in tin by eight, (so) also in lead; copper five, in iron ten.**

Mitâksharâ: While being heated in fire, gold is not reduced. Therefore, as much may have been delivered into the hands of goldsmiths for preparing a bracelet &c., so much by weight must be returned by these. Otherwise, they should be compelled to make good the loss and punished too. In the case of silver, however, when (a quantity weighing) a hundred palas is being heated, two palas are lost. *Eight* **(ashtau)** *in* the case of *tin* **(trapuṇi)]** and *also lead* **(sise cha)** *i. e.* in a hundred, as necessarily follows. In the case of tin, as also of lead, while a hundred palas are being heated, eight palas lose in weight. *In copper, five; in iron, ten* **(Tâmre panchadas'âyasi)** *i. e.* in a hundred *palas* of copper five palas, in

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[1] Ch. VIII. 222.

[1A] There is a mitâka in the text on p. 117. l. 15. for योगविनश्वर read योगाविनश्वर.

[2] The reading परीक्षितं सत् is better than परीक्ष्य given in the text at l. 16. and in trans-lating the text, the former reading is adopted and not परीक्ष्य. Bâlambhatta reads similarly, and notices परीक्ष्य as a V. L., but apparently does not prefer it.

[3] By Narada Çh. IX. 4.

(those of) iron, ten palas are lost. Here also 'a hundred' is indeed to be understood. As regards white-copper, as it is made out of tin and copper, a (scale of) reduction is to be determined in recordance with (the rules for) these. Artisans, causing a reduction further than this, should be punished.

The Author mentions an increase in some cases, such as in the case of blankets &c.

Yâjñavalkya Verse 179.

In the case of woolen and cotton yarns, the increase is ten palas in a hundred; in (cloth of) middling quality, five; and in fine quality three palas.

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Mitâkshara: In the case of woolen yarn of rough quality, from which blankets and similar things are prepared, in those cases, an increase of ten *palas* in a hundred *palas* should be understood. A similar rule should be understood in the case of cloth &c prepared from cotton yarn. *In* (the case of cloth of) *middling quality* (**madhye**) *i. e.* in the case of cloth &c. prepared from yarn which is not very fine, the increase is five *palas* (in a hundred). In cloth prepared from fine yarn, the increase should be understood to be three *palas* in a hundred. This (rule) moreover applies in the case of cloth, which is not washed.

The Author mentions a special rule in regard to other articles:

Yâjñavalkya Verse 180.

In the case of embroidered cloth, as also in cloth made of hair, a reduction of a thirtieth part is allowed. There is no decrease, nor an increase in the case of silken cloths, or those made of barks.

Mitâksharâ. *Embroidered cloth* (**Kârmikam**) *i. e.* cloth prepared with pictures thereon. That cloth, where a wheel or a *Swastika or* a like design is woven into by yarn-fibres, is known as *embroidered cloth* (**Kârmika**). That cloth, in which hair are woven into *e. g.* an upper garment, is a *cloth made of hair* (**Roma-baddhaḥ**). In these cases, a *reduction* (**kshayaḥ**) by a thirtieth part should be understood. In the case of *silken cloth* (**Kaus'eye**) *i. e.* made of silk, *and* of those *made of barks* (**Valkaleshu cha**) *i.e.* of cloths prepared from barks of trees, there is neither an increase, nor a reduction. But, as much as has been given to the weaver and the like for being woven into, exactly so much should be taken back.

The commodities being innumerable, it is impossible to consider the rule of reduction or increase in the case of each article. So the Author mentions in general a rule for determining a decrease or an increase

Yâjñavalkya Verse 181.

When a thing has deteriorated, whatever the experts in those articles may declare after taking into consideration the place, the time, the use, and the strength or weakness, must certainly be caused to be paid.

Mitâksharâ : In the case of a hemp, or a silk cloth, where the article *has deteriorated* (**Nashte**) *i. e.* has undergone a reduction, whatever the *experts in those articles* (**Drawyâṇâm Kus'alâḥ**) *i.e.* those who are versed in rules of increase or decrease in the case of those articles, after having examined into the (circumstances of) *place* (**Des'am**), *time* (**Kâlam**), *use* (**upabhogam**), and also the *strength or weakness* (**balâbalam**) *i. e.* durability or non-durability of the article which has deteriorated, may determine, *that certainly* (**tat asams'ayam**) the artizans must be made to pay.

Thus ends the Chapter on Rescission of Purchase.

CHAPTER XIV.

Breach of Contract of Service.

The Author now sets out discussing another title of law known as the Breach of Contract of Service. Its nature has been described by **Narada**[1] thus :—" If a man has promised to render service, and does not render it, "it is termed a Breach of Contract of Service, a title of law". Service is the performance of an order. He who undertakes it, and afterwards does not do it, that title of law is known as the Breach of Contract of Service. An attendant moreover is of five kinds. A pupil, an apprentice, a hired servant, a man appointed to (perform) a task, and a slave. Of these, the first four are known as servants or labourers. These moreover do pure work. Slaves, moreover, such as one born in the (master's) house and the like, are of fifteen sorts, and perform impure service such as sweeping the house, the door, the impure places, the street, the dust-bins &c. This has been made clear by **Nârada**[1]: " The sages have described five sorts of "attendants according to the *S'âstra*. Among these are four sorts of "labourers; and slaves (of the fifth category) are of fifteen kinds (2). "A student, an apprentice, a hired servant; and the fourth,—a person "specially appointed (to do a thing); these are to be regarded as labourers. "Slaves are those ' born in the house ' and the rest (3). The sages have "declared that the state of dependence is common to all these; but that "their respective position and income depends on their particular caste and

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[1] Ch. V. 1.

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"occupation (4). Also there are two sorts of occupations; pure[2] work and "impure work. Impure work is that done by slaves. Pure work is that done "by labourers (5). Sweeping the house and the gateway, the places where "impurities are deposited, the street, the dust-bins; shampooing the secret "parts of the body; gathering and putting away the leavings of food, ordure, "and urine (6). And lastly, rubbing the master's limbs when desired; this "should be regarded as impure work. All other work besides this is pure(7)."

There, by ' a student ' is meant one who is desirous of studying the Vedas. ' An apprentice ' is one who wishes to study the mechanical arts. He who does a work by wages is ' a hired servant '. One supervising the (work of) labourers is an officer ' specially appointed to a task '. ' Place of impurity ' means a place where the leavings of the meals are thrown, such as a pit &c. ' A dust-bin ' is a place where the sweepings from the house, such as dust &c. are stored. ' Putting away ' means throwing off.

' A hired servant ' (as referred to) here is of three sorts: So it has been laid down[3]: " Here, the highest class is that of a soldier, the agri-"culturist is the middle class, and the porters are the lowest class. These "are the three classes of hired servants".

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[1] Ch. V. 2-7.

[2] As opposed to impure which is described further on in the lines following.

[3] By Nârada Ch. V. 23.

Slaves again are[1]: "One born at his (master's) house; one purchased; "one received (as a gift); one obtained by inheritance; one maintained "during famine; similarly one who was pledged by his master (26); "One released from a heavy debt; one acquired (as a captive) in war; one "won through a wager; one who has offered himself saying 'I am thine'; "an apostate from asceticism; one enslaved for a stipulated period (27); "One who has become a slave in order to get a maintenance; one "led in by a female slave; and one self-sold. Thus in all fifteen kinds of "slaves are declared in *S'astra*." Born in the house (of the master) of a female slave is 'one born at his (master's) house'. 'Purchased' *i. e.* by (the payment of) a price. 'Received' *i. e.* by a gift &c. 'Obtained by inheritance' *i. e.* one who was a slave of the father or other ancestor. 'Maintained during famine' *i. e.* one, who during famine, was saved from death in consideration of his becoming a slave. 'Pledged by his master' *i. e.* who was made a pledge upon the acceptance of money (by the master). One reduced to slavery by being freed from his debts is 'a slave released from debt'. 'Acquired in war' *i. e.* one conquered and captured in a battle. 'Won through a wager' *i. e.* one won after a stipulation 'In case I am defeated in this dispute, I shall become your slave.' "One who has offered himself saying 'I am thine,'" *i. e.* one voluntarily offering himself as a slave saying 'I am thy slave.' 'An apostate from ascetisism' *i. e.* one who has swerved from the vow of ascetisism. 'Stipulated' *i. e.* one made a slave with the stipulation 'he shall be your slave for such a time.' 'A slave of maintenance' *i. e.* one who has entered into a perpetual state of slavery in lieu of maintenance. 'Led by a female slave'—a female slave (*wadawâ*) *i. e.* one born in the house; led by her *i. e.* out of a fancy for her, one who has married her and entered into slavery. He who sells himself is a 'self-sold slave'. Thus these are the fifteen sorts.

As for the seven-fold classification stated by **Manu**[2] in: "One made "captive under a standard, a slave for maintenance, one born in the house, "one bought, and one who is given, one inherited from ancestors, and "a slave of punishment, are seven kinds of slaves": that is intended to point out that these persons are (regarded and treated as) slaves, and not with a view to limit the numbers.

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[1] See Nârada Ch. V. 26–28. It would be interesting to compare the provisions laid down here with similar provisions in Roman Law, and the learned reader is referred to the same. The rules regarding the emancipation of slaves have a peculiar resemblance to those found in Roman Law.

[2] Ch. VIII. 415.

Of the servants (mentioned before) *viz.* a pupil, an apprentice, a hired servant, an appointed labourer, the course of conduct for a pupil has already been stated before[1] *viz:* "Being invited (by the preceptor) "indeed he ought to study; and whatever is acquired by him he should "bestow it on him *i. e.* the preceptor." The rule for the specially appointed work-man and the hired servant will be mentioned in the chapter on "Payment of Wages[2]": "As much work a man performs, so much will be his wages".

With a view to state a Special Rule regarding a slave and an apprentice, the Author says

Yájñavalkya Verse 182.

One enslaved by force, and also one sold by robbers, are released (from slavery). One who saves the life of his master (is released), as also (are they released) by paying the expenses of maintenance or by paying off a debt.

Mitâksharâ: *By force* (**Balât**) *i. e.* by a forcible obstruction, one *who has been made a slave* (**Dâsîkritaḥ**). He who being overpowered and taken away by robbers was *sold* (**vikrîtaḥ**). From the use of the word 'also' (*api*), are included one 'pledged' as also one 'given'. Such a one is *released* (**muchyate**). If the owner do not release, then he should be caused to be released by the king. **Nârada**[3] also has observed: "Those "who are sold after having been captured by robbers, and those who are "enslaved by forcible means, must be emancipated by the king. Slavery in "their case is not allowed." He who saves the life of his master, when he was confronted by robbers, tigers &c.,—such a one also—should be caused to be manumitted. This last is a reason for freedom from slavery common to all (kinds of) slaves, since **Nârada**[4] has observed: "Should (however) "any one out of them save his master's life, when his life is in peril,

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"he shall be released from slavery, and shall also take a son's share[5]."

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[1] See Yâjñavalkya Âchârâdhyâya Verse 27.

[2] See Verse 196 further on page 124 (text).

[3] Ch. V. 38. This is a general rule applicable for any kind of slave. See further on.

[4] Ch. V. 30. *i. e.* a share equal to that of a son (Bâlambhatti).

The cause for the manumission of 'a hired servant' and others respectively has been mentioned. Persons who have become slaves on account of being maintained during famine, as also slaves of maintenance, are released by paying off the amount of maintenance *i. e.* by offering as much money to the master as may have been consumed from the date of his enslavement. While a pledged slave and a slave of indebtedness (are released) by the redemption of these. He is released by repayment of the amount, together with interest after receiving which he was pledged by the master, or also that after paying off which, he was emancipated by the master from the liability of the creditor.

A special rule also has been stated by **Nârada**[1]: "One maintained "during famine is released from bondage if he gives a pair of oxen. "What has been consumed during famine, cannot be repaid (in value) "by labour (31). A slave of maintenance is released immediately on his "giving up the subsistence (36). Even a pledged slave (is released) if his "master redeems him by discharging the debt (32). It is, however, by "paying the debt with interest that a debtor is released from slavery (33)."

The modes of manumission of a slave who has offered himself by saying 'I am thine', of a slave captured in war, of one won through a wager, of one enslaved for a stipulated period, and of one enslaved on account of his being enamoured of a female slave, have also been similarly laid down by the same **Sage**[2] for all these cases respectively: "One who "has come forward and offered himself declaring 'I am thine', one made a "prisoner in war, and one won through a wager, these are released on giving "each a substitute whose capacity for work is equal to theirs (34). Also one "enslaved for a stipulated period becomes emancipated on the expiration of "the period (33). One enslaved on account of his being connected with "a female slave is released upon the female slave being kept[3] in check "(36) *i.e.* by being prevented from having intercourse with the slave."

Thus, therefore, in the case of slaves who are born in the house, bought, obtained, acquired by inheritance, and self-sold, there is no emancipation except on account of the general causes of emancipation (mentioned above) *viz.* by saving the life of the master and thus securing his favour. Since no special mode has been mentioned.

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[1] Ch. V. 31. 36 (1) and 32, and 33.

[2] Ch. V. 34, 33, (2), and 36 (2);

[3] निग्रहात्—By restraint; see the explanation in the Mitâksharâ. The Vivâdachintamaṇi explains it as "by the abandonment of the female slave." see Colebrooke Dijest III. 1. 4. Vol. II. p. 28,

The act of emancipation, moreover, should be performed in the following manner as has been laid down by the same sage[1]: "He who, "pleased in his mind, wishes to emancipate his own slave, shall take from "his[2] shoulders a jar filled with water and smash it (42). He shall sprinkle "his head with water containing whole grain[3] and flowers, and having "declared him a free man three times, he shall dismiss him with his face "turned towards the south".

There is, however, no emancipation of an apostate from ascetisism; so the Author says

Yâjñavalkya Verse 183 (1).

An apostate from asceticism shall become the king's slave till death.

Mitâksharâ: *Asceticism* (**Pravrajyâ**) means a complete renunciation (of all worldly objects)-*Sannyâsa.* One who is an *apostate* (**Avasitaḥ**) therefrom, *i. e.* who has swerved from it. (Such a one) if he has not undergone expiation, indeed becomes a slave of the king. Death alone shall terminate this (kind of) servitude. In no other time can there be an emancipation.

The Author mentions a rule regarding slaves having regard to (the several) orders (**Varṇas**)[4]

Yâjñavalkya Verse 183 (2).

Slavery is in the descending order of the *Varṇas*[4], and not in the ascending order.

Mitâksharâ: Of the *Varṇas*[4] such as the Brâhmaṇa and the rest, a state of slavery shall exist *in the descending order* (**Ânulomyena**). Thus, of a Brâhmaṇa, a Kshatriya and the rest may become a slave; of a Kshatriya, the Vaiśya and the S'ûdra; and of a Vaiśya, a S'udra; thus the state of slavery shall operate in the descending order. Of an ascetic, however, who renounces his own duties, a slavery is indeed ordained even in an inverse order. As says **Nârada**[1]: "Slavery is not ordained in the "inverse order of the (four) Varnas, except where a man violates the duties "peculiar to his class. Slavery is considered as analogous to the condition "of a wife".

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[1] Nârada Ch. V. 42-43.

[2] *i. e,* of the slave's shoulder.

[3] Generally rice. Sometimes it may be any other grain such as wheat &c. But it must be whole and not crushed or otherwise damaged.

[4] *i. e.* the classes. See Yâjñavalkya Âchâra. Chapter IV. On the distinction based on *Classes* (*Varṇa*) and *Castes* (*Jâti*) see verses 90-96.

The Author mentions the duties of an apprentice

Yájñavalkya Verse 184.

Though he have acquired his art, the apprentice must remain in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the proceeds thereof.

Mitâksharâ: *An apprentice*, (**Antewâsî**) *must remain* (**vaset**) *in the house of the master* (**Gurorgrihe**), *during the stipulated period* (**Kritakâlam**) *i. e.* for as long a period as may have been fixed under an agreement *e. g.* "I shall reside in your house for a period of four years for learning medicine or any other art &c.", and even when he has acquired the desired lore, even before the (expiration of) four years.

How should he remain? *Receiving his subsistence from the teacher* (**Guruprâpta bhojanaḥ**)—he who has obtained his food from his teacher—a person of such a description. *Giving to him the proceeds thereof* (**Tatphalapradaḥ**)—he who offers to the teacher the proceeds of it *i. e.* of the art—. Thus he should reside.

Even a special rule has been indicated by **Nârada**[2]

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"If one wishes to be initiated into the art of his own craft, with the sanc-"tion of his relations, he may go and live with a teacher, after having "fixed the duration (of his apprenticeship) (16). The master shall teach "him, feeding him at his own house. He must not employ him in work "of a different description, and must treat him like a son (17). If one "forsakes a master, who instructs him and whose[3] character is unex-

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[1] Ch. V. 39.

[2] Ch. V. 16. 20.

[3] असंदुष्टम्—who has not been found fault with, as having been concened in any moral sin or legal crime.

"ceptionable, he shall be compelled by force to remain (at his master's "house); such a one makes himself liable for a corporal punishment and "imprisonment (18). Even though his course of instruction be completed, "an apprentice must continue to reside at the house of his master, untill "(the expiration of) the fixed period; whatever work he may do, while "there, the profits thereof shall belong to the master (19). After he has "acquired his art, at (the end[1] of) the stipulated period, the apprentice "shall reward[2] his master plentifully, and return home, after having "obtained leave from him (20)".

The word *Vadha* 'Coporal punishment' here is used in the sense of 'beating', having regard to the trifling nature of the fault.

Thus ends the Chapter on Breach of Contract of Service.

CHAPTER XV.

Transgression of a Compact.

Now is being described (the law regarding) the 'Transgression of a Compact'. Its characteristics have been indicated by **Nârada**[3] through (a discussion of) its contrary: "The (general) rules settled among *Pâ-"khandis*[4], *Naigamas*[5] and like others is called a Compact (*Samaya*). Non-[6]

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[1] *i. e.* when the time fixed for his apprenticeship ends. Asahâya and Bâlambhṭṭa.

[2] Dr. Jolly translates in this manner. According to the interpretation of Bâlambhaṭṭa, प्रदक्षिणम् would only mean a special part of worship *viz.* going round the object of worship with folded hands. For he interprets अनुमान्य as तोषयित्वा and with that view the literal meaning of प्रदक्षिणम् may not have any force. The reader will note that Bâlambhaṭṭa's interpretation is the one which will strike every one having in mind the sense ordinarily conveyed by a प्रदक्षिणा.

[3] Ch. X. 1.

[4] Pâkhandis—*i. e.* Heretics—Kshapaṇakas *i. e.* the Buddhist or Jain mendicants, and others who do not accept the authority of the Vedas. See Mitâksharâ further on on Yâjñ. II. 192.

[5] Naigamas—traders and others. Those who regard the Veda as authority, only as the word of an *Âpta e. g.* the Pâśupatas and others. See Mitâksharâ on II. 192.

[6] This is why, Vijñâeśwara characterises this definition of Nârada as one given in a negative. manner. *Apâkarma* is the transgression of a compact (Samaya). Its 'non- trausgression" *i. e.* performance is *Anapâkarma*; and a chapter of law which deals with the non-performance or transgression is a chapter entitled 'Transgression of a Compact". व्यतिरेकमुखेन when freely translated here, only means 'by its opposite'. It is in this way: The Chapter is headed 'Transgression of Compact', while the definition gives what is a 'Compact' and how it is maintained. Thus the subject of the 'transgression of a compact'is illustrated by a treatment of its opposite.

"Transgression of such a compact thus gives rise to a Title of Law known "as Transgression of a Compact." Settlement of rules in accordance with the special[1] provision of law is a compact; the non-transgression of the same *i. e.* non-breach *i. e.* observance. When this is being transgressed, it gives rise to a Title of Law. This is the meaning.

The Author states a rule by way of an introduction to the same

Yâjñavalkya Verse 185.

A king, having erected a building in the town, and having therein lodged Brâhmaṇas, versed in the[2] three Vedas provided[3] with livelihood, should say to them 'Protect your *Dharma*[4]'.

Mitâksharâ: The king, in his town *i. e.* in the fort or other place, having erected *a building* **(Sthânam)** *i.e.* a white house, and *therein having lodged Brâhmaṇas* **(Tatra Brâhmaṇân Nyasya)** *i. e.* having appointed them there, and having provided that assemblage of Bráhmaṇas versed in the three Vedas, with livelihood *i. e.* having endowed them with land, gold &c. should say to these Brâhmaṇas "May your own *Dharma* be observed by you" *i. e.* the rules regarding the Varṇas[5] and Âśramas as dictated in the Vedas, and Smritis.

The Author mentions the duties to be performed by these when so appointed

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[1] पारिभाषिकधर्म—*i. e.* the particular provisions of the Dharma-S'ästra. The Dharma or rule, as propounded in the Dharma-S'astra bearing on special contracts or agreements.

[2] *i. e.* the *Rik*, *Yajus* and *Sáma*. These are the three Vedas indicated by the expression *Traividya*.

[3] *i. e.* after having properly endowed the institution with funds for the maintenance of persons acting there *viz.* for their payment &c. The meaning is that he should assign land, money, or the like for their maintenance, so that they may perform their duties without any interruption.

[4] *Swadharma—i. e.* the duties binding upon self (*Swa*). The word *swa* (self) applies to all, and indicates the law, in general, holding among the people. The author declares here what should be done by the Brâhmaṇas thus enjoined.

[5] The four principal *Varṇas* are the *Bráhmaṇa*, *Kshatriya*, *Vaiṣya* and *S'údra*. (See Yâjnavalkya Achâradhyâya Verse 10, also. Ch: IV). The *Âs'ramas* i. e. the paths of life are four *viz*: The *Brahmacharya* or the life of a celibate student see Yâjñ. Âchâra. 32–50. *Gárhasthya* or the life of a householder, after marriage; the *Wánaprasthn*, the life of a hermit, and the *Sannyása* or the life of an ascetic.

Yâjñavalkya Verse 186.

Without detrinment to one's own *Dharma*, whatever customary law there may be, should also be carefully observed as also the duties imposed by the king.

Mitâksharâ: Duties arising under any *custom*[1] such as the preservation of the pasture for cow, and of water, and the management of temples and the like, should also be carefully observed without (however) infringing the duties prescribed by the *S'ruti* and the Smṛitis. Similarly, the king, should also enforce *such customary rules only as are not inconsistent with one's own Dharma* (**Nijadharmâvirodhenaiva yaḥ Sâmayiko dhârmaḥ**) *e. g.* 'meals should be provided for all travellers', or the rule that 'the horses and the like shall not be carried to the dominions of the enemy'.

Having thus observed that a 'Customary rule' should be observed, the Author mentions a penalty for its infringement

Yâjñavalkya Verse 187.

He who embezzles the property of a *gaṇa*, as also he who violates their usage, the king should deprive such a one of all his effects and banish him from his realm.

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Penalty for violating a customary Rule.

Mitâksharâ: *He* (**yaḥ**) moreover, who misappropriates the property of a *gaṇa i. e.* property pertaining to any guild or association of a village. *A Customary rule* (**Samvit**) is a compact, either made by an association or by the king. He who *violates* (**Langhayet**) *i. e.* transgresses these; of such a man, the whole property should be taken away and the king *should banish* (**vipravâsayet**) *i. e.* expel him *from his realm* (**swarâshtrât**). This penalty, moreover, should be administered in cases of aggravated offences or the like.

In the case of petty offences, however, any of the four penalties *viz.* banishment, or a fine of four *suvarṇas*, six *nishkas*, or a hundred silver coins, may be fixed by regard to the caste and the capacity (of the offender) as propounded by **Manu**[1]: "If a man belonging to a corporation "inhabiting a village or a district, after solemnly swearing to a compact, "break it through avarice, (the king) shall banish him from his realm (219). "And having imprisoned such a breaker of a compact, he shall compel him "to pay, four *suvarṇas*, six *nishkas*, and one hundred silver (coins) (220)".

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[1] *Samaya* may either mean a compact, agreement, or a custom, which is nothing but a course of conduct followed by a tacit agreement.

The Author mentions how they should act

Yâjñavalkya Verse 188 (1).

The directions given by the advisers of the association should be observed by all.

Mitâksharâ: Among the members, those who are competent to advise as to the interests of the Association, the directions given by these should be followed by others who are incorporated as members.

Otherwise there is penalty; so the Author says

Yâjñavalkya Verse 188 (2).

There, he who acts contrary, shall be compelled to pay the first amercement.

Mitâksharâ: He, however, from among the members, who acts obstructively to the directions of one who advises as to the interests of the Association—such a man—must indeed be punished by the king with the first amercement.

How should the king behave towards the members of an Association? So the Author says

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[1] Ch. VIII. 219-220.

Yâjñavalkya Verse 189.

Those assembled for the affairs of the Association, let the king dismiss, when their buisiness is finished, after honouring them with gifts, honour, and expressions of civility.

Mitâksharâ: Such members of the Association as may have approached the king for a purpose of the association, the king should dismiss after pleasing them by means of gifts, honour and expressions of civilities, after they have finished their business.

The Author mentions a rule for one who appropriates what is given to the Association

Yâjñavalkya Verse 190.

Whatever a man who is sent for the business of an Association receive, let him deliver it. He should be compelled to pay eleven-fold, if he does not himself deliver.

Mitâksharâ: He who, when deputed to wait upon the king on a business of the Association, whatever he receives, such as gold, dress &c., all that he must offer unasked to the Committee of the Association. Otherwise, he shall be made to pay a fine equal to eleven times the property obtained (by him).

The members of the advising body should be of a particular description. So the Author says

Yâjñavalkya Verse 191.

Men knowing Dharma, pure, un-avaricious, should be commissioned to consider the business[1]. The directions of these, the advisers of the general body, must be executed.

Mitâksharâ: Men, knowing the Dharma as laid down in the *S'ruti* and the *Smṛitis*, pure internally and externally, un-avaricious for any pecuniary gain, should be commissioned as members of the deliberative assembly. Their directions must be executed by others. This rule is again repeated as an indication of (special) regard (therefor).

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[1] These are the same as referred to in Verse 188 above.

Now, with a view to extend the rules laid down by the Scholars in the three Vedas, to *S'reṇis* &c. the Author says

Yâjñavalkya Verse 192.

This is the rule for the associations of *S'reṇis*, *Naigamas*, *Pâkhandis* and *Gaṇas*. The king should preserve their peculiarities, and conserve their rules of old.

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Mitâksharâ : *S'reṇis* or bodies of artisans are those who subsist by the manufacture of the same commodity. *Naigamas*, such as the Pâśupatas and others, are those who accept[1] the authority of the *Vedas* as composed by an Âpta. The *Pâkhandis*, such as *Nagnas*[2], *Sangatas* &c. are those who do not even admit the authority of the Vedas. A Gaṇa is a body of men living by the same profession such as the soldiers and the like. For these four descriptions of men this is the rule *i. e.* as laid down *viz.*, "Without[3] detriment to one's own *Dharma* &c". Moreover, let the king preserve their peculiar rules of conduct, and also conserve their hereditory craft.

Here ends the Chapter on the Transgression of a Compact.

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[1] According to the tradition, the Vedas are the direct revelations of the Divine Word made to the seers who simply transmitted what they saw. There are some schools of thinkers, who do not accept this origin of the Vedas, but maintain that they are the compositions of revered sages. They accept the authority of the Vedas, not as a Divine Word revealed and transmitted through the seers, but simply as a work of high authority entitled to respect and weight, as having been composed by men of vast learning and accomplishment.

[2] Varieties of *Buddha yatis*. These do not accept the authority of the Vedas at all.

[3] *i. e.* Yâjñ: II. 186.

CHAPTER XVI.

On the Non-payment of Wages.

Now begins the chapter called the non-transgression of Wages, a title of law. Its characteristics have been stated by **Nârada**[1]: "A series "of rules (will be) stated (next) for the payment and non-payment of "wages of labourers. It is termed 'Non-payment of Wages' a title of law." The meaning of this (is this): That chapter of law wherein the rules of payment and non-payment of wages of the labuourers have been stated (*viz.*) in the stanzas following, is known as the chapter on the 'Non-transgression of Wages.'

There the Author mentions (a rule as to) a decision.

Yâjñavalkya Verse 193.

One who having received his wages, abandons the work, must pay twice. If none is received, he shall be made to pay an equal amount. The implements shall be preserved by the servants.

Mitâksharâ: One, by whom the wages had been received, if he abandon *i. e.* do not perform the work which he had undertaken, should pay twice the amount of wages to the owner. When however, he abandons a task which he had agreed to do, when he had not received any wages, then he should be made to pay an equal amount of as much as was fixed as wages, and not a double.

Or, (the passage may be interpreted[2] thus): 'he shall be forcibly compelled to perform his work, after payment to him of the wages promised' as directed by the following text of **Nârada**[3]: "One, who does not perform "a work after having agreed to do it, should be forcibly compelled to do it, "after paying him his wages."

The rule as to wages also, has been stated by the **same sage**[4]: "Let the "master, for whom work is performed, pay wages to the servant hired (by

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[1] Ch. VI. 1.

[2] Vijñaneśwara proposes this interpretation of the text, as an alternative course suggested by the text of Nârada.

[3] Ch. VI. 5.

[4] Ch. VI. 2.

"him) according to their agreement, at the beginning, at the middle or at "the end, as may have been settled between them."

The servants also must preserve to the best of their ability implements of husbandry, such as the hide, and the rope of the plough and like others: otherwise there would not be any ploughing &c.

The Author mentions a rule as to one who causes a work to be performed without determining the wages

Yâjñavalkya Verse 194.

He, however, should be made to pay by the rule of the land a tenth part of the (proceeds of) trade, cattle or crop, who without settling the wages, causes work to be done.

Mitâksharâ: That master, however, *i. e.* a grocer, an owner of cows, or an agriculturist, who, even without clearly settling the wages, causes work to be done by a hired servant, whatever (profits) may be obtained from that work *i. e.* from the trade, cattle, or agriculture, the tenth portion of that should be caused to be paid to the hired servant by *the ruler of the land* (**Mahikshitâ**) *i. e.* by the king.

The Author mentions a rule for one who does something without an order

Yâjñavalkya Verse 195.

When one disregards the place and the time, as also where one otherwise causes a reduction in profits, in such a case, the will of the master (shall prevail); but more shall be paid if more be made.

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Mitâksharâ: A hired servant, however, who does not sell a commodity at the proper time[1] or in a proper place and thus disregards these through insolence or the like; or one who at the same time or place brings in less profits than what would have been reaped by an extensive sale (of the merchandise), in the case of such a servant, the will of the master shall prevail in the matter of payment of wages; *i. e.* as much may he wish, so much should he pay, and not the entire wages.

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[1] The meaning is this : though he see a proper time and place for the sale of the commodity, if the factor, through insolence or the like cause, do not sell it; or if he accept less profit, thinking that the time and place would cause him much trouble, let the master pay him what wages he pleases, not the full hire. Colebrooke. Digest.

When, however, more profits are made by reason of a special knowledge as to time and place, then an amount exceeding that fixed before, should be paid by the master to the labourer.

The Author mentions a rule as to the payment of wages for a task accomplished by several workmen

Yájñavalkya Verse 196.

As much work a man does, so much will be his wages; if it cannot be accomplished by both, the wages should be paid for the work done according to the agreement.

Mitâksharâ: When, moreover, even a single task for which the wages have been fixed, (and the performance of) which was (undertaken and) commenced, but which, on account of illness or any other impediment was found to be impossible to be accomplished even by both—by the use of the word 'even' (is implied) "even by many"—*i. e.* if it could not be finished, then *as much work a labourer does*, (**Yo yâvat Karma karoti**) *so much* (**Tâvat**) *i. e.* proportionately to the work done by him, as determined upon by an arbitractor, should be paid to him as his *wages* (**Vetanam**), and not an equal amount. It should not be supposed that no payment may be made, on the ground that there was no agreement for payment of wages for the several parts of the work.

If, however, the work be accomplished by both, *i. e.* be finished, then as much as was agreed upon *i. e.* stipulated for, so much should be paid to both; and not the entire amount of wages to each, nor should the payment be according to the work after determining it.

The Author mentions a rule regarding a Soldier and a Carrier

Yájñavalkya Verse 197.

A Carrier shall be compelled to make good a vessel which has perished except it be by (act of) God or the king: One who raises an abstruction at the time of starting shall be made to pay twice the (amount of) wages.

Mitâksharâ: A vessel regarding which no calamity has arisen owing to (the act of) God or the king: If such a vessel be destroyed by a carrier through his folly then he should be made to pay for such a vessel according to the loss (caused). **Nârada** says[1] the same: " If a vessel be damaged "on account of the fault of the Carrier, he shall be compelled to make "good whatever loss may have been caused, excepting such as may be due "to an Act of god or the king."

He, morever, who having undertaken before the service of carrying one who intended to start on an auspicious day for a marriage or other similar purpose, create an impendiment at the time of starting by saying at that time that he would not do the work, then he shall be fined double the amount of wages fixed. Since an obstruction was raised to a highly auspicious undertaking.

Yâjñavalkya Verse 198.

(If he declines) after setting out, he shall be fined a seventh part; a fourth if (he desert) on the way; he shall forfeit the entire amount of wages if (he declines) in the midway, so also one who causes a work to be abandoned.

Mitâksharâ: Moreover, *After setting out* **(Prakrânte)** *i. e.* after a start had (once) been made, he who gives up a task undertaken by himself,–such a one–should be compelled to pay a seventh part of the wages agreed upon.

An objection.

It may be said: indeed by the text[2] " one causing an obstruction at the time of starting &c." the payment of double the amount of wages has just before been stated; and now, a seventh part; thus there is a contradiction. The answer to this is: that for a man who abandons a work at a time when another servant may be procured, the seventh part (is the fine); while for one who gives up at the auspicious moment of

The Answer.

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[1] Ch. VI. 9.

[2] Yâjñ. II. 197 (above).

starting itself, a fine of double the amount of wages (is prescribed), thus there is no contradiction. He moreover, who abandons *on the way* (**Pathi**) *i.e.* after a start was made and the journey had once been commenced,-such a one should be fined a fourth part of the wages. He, moreover who deserts on the midway shall be fined the entire amount of wages.

He, however, who, *causes the work to be abandoned* (**Tyājakaḥ**) *i. e.* when the master compels a servant to stop work, when the latter was not giving it up, such a one also (*i. e.* the master) shall be compelled to pay to the servant the seventh and other portions respectively, regard being had to the places (where compulsion was caused) as stated before.

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This, rule moreover, regards one who has not had any disease or a like calamity *vide* the text of **Manu**[1]: " A hired servant who, not being ill, "does not perform, through insolence, the work as agreed upon, shall be "fined eight *Krishṇalas*[2], and no wages shall be paid to him."

When, morever, after the disappearanee of the disease or the like cause, he makes good his undertaking taking into calculation the lapsed days, then indeed he gets his wages. *Vide* the text of **Manu**[3]: " If, "however one who was ill, after recovery performs his work according "to the original agreement, he shall indeed receive his wages even after "(the lapse of) a very long time."

When, however, one after he is cured of the disease, being perfectly at ease, through idleness or like other cause does not do the work commenced, even to a small extent, nor gets it finished by another, to such a one no wages shall be paid. As says **Manu**[4] : " But if he, whether sick "or well, does not (perform or) cause to be performed (by others) his "work according to his agreement, the wages for that work shall not be "given to him, even if (it be only)slightly incomplete.".

Here ends the chapter on the ' Non-payment of Wages.'

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[1] Ch. VIII. 215.

[2] The Gunja berry. *i. e.* of gold, silver or copper according as the case may be (Medhatithi). ' of gold ' (Kulluka).

[3] Ch. VIII. 216.

[4] Ch. VIII. 217.

CHAPTER XVII.

On Gambling and Betting on Animals.

Now commences the Chapter of law called "Gambling and Betting on Animals." Its characteristics have been mentioned by **Nârada**[1]: "Dis-"honest gambling with dice, small slices of leather, tittle staves of ivory, "or like other, and also betting on birds, form a title of law called "Gambling and Betting on Animals." *Akshaḥ* means dice. *Bradhna* is a small piece of leather, *S'alâkâ*-small staves of ivory &c. made long and squared. By the use of the term *Âdya* 'Or like other,' are included other instruments of enjoyment, such as the play having the four components[2] of an army division, including the elephant, the horse, the chariot and the like. Gambling *i. e.* playing by means of these inanimate things is preceded by a bet. Similarly that play by means of birds such as a cock, a pigeon and the like—and by the use of the word 'and' *cha*, wrestlers, rams, buffalos &c.—which is initiated by a bet, both of these give rise to a title of law called 'Gambling and Betting on Animals.' That has been stated by **Manu**[3]: "That which is arranged by (the use of) inanimate "things, is called among men 'Gambling (*Dyûta*); when however the play "is enjoyed by means of animate beings, it should be known as Betting "(*samâvhayaḥ*)"

The Author mentions the (scale of) remuneration of a keeper of the Gambling Hall

Yâjñavalkya Verse 199.

In a bet, when the wager is a hundred (fold) the keeper of a gambling house shall take five per cent from a gamester[4], and ten per cent from the others.

Mitâksharâ: The stake determined by mutual agreement of the gamblers is called a 'bet' (**glahaḥ.**) In such a bet one who has (stipulated to have) a hundred in reference to it, *i. e.* an increase which is of a higher proportion than a hundred fold-is an incease by hundred-fold. From such a gamester, *the keeper of the hall* (**Sabhikaḥ**) may take five per cent for his own maintenance. A hundred in which five paṇas is the increase is a ' five per cent ' (**Panchakam S'atam**). The affix *Kan* (*in S'atakam*) is used under the rule[1]: " These affixes (mentioned in Paṇini V. I. upto rule 47) have also the sense of ' an interest, or rent, or a profit, or a tax, or a bribe given thereby or in that." The meaning is that he should take a twentieth part (of the gains) of the winner of the bet.

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[1] Ch. XVI. 1.

[2] An army is generally described as having four parts *viz:* the elephant, the horse, the chariot and the foot. *Chaturanga* is a a kind of chess in which these four parts are represented.

[3] Ch. VIII. 223.

[4] *i. e.* the Keeper of a gambling house.

He to whom belongs the house for the residence of gamesters, is a *keeper of the gambling house* (**Sabhikaḥ**). One who makes provision for all the instruments of gambling such as dice &c., and maintains himself with the amount received therefrom is called a *Sabhâpati*. From any other, moreover, *i. e.* from a gamester who has not laid a wager upto a hundred (fold), *ten per cent* (**das'akam S'atam**), he should take a tenth part of the amount won. This is the import.

What should be done by a keeper who has thus been provided for? So the Author says

Yâjñavalkya Verse 200.

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He, being well protected, shall pay a portion to the King as fixed. He shall recover the amount of the wager, and pay the winner; and being ever patient shall give a true decision.

Mitâksharâ: The Officer of the gambling house, for whom provision has thus been made—*he* (**Saḥ**) being protected from rogues and gamesters by the king—shall pay to the king a portion as agreed upon. Similarly, he should recover the amount of the wages *i. e.* should recover it from the losing party, by accepting a pledge or by arrest &c. And having recovered that amount, he the keeper should pay it to the winner *i. e.* the successful party. Also, being (ever) patient, he should always declare a true decision to the gamblers. That has been stated by **Nârada** :[2] "The master of the gaming-house shall arrange the game, "and pay the stakes won therein."

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[1] Pâṇini V. I. 47.

[2] XVI. 2.

When, however, the keeper is not able to make (the party) pay, the king should cause it to be paid. So the author says

Yâjñavalkya Verse 201.

That which has been won publicly in an assembly of gamesters, in a gaming house having a keeper, where the (fixed) portion has been received by the king, he shall compel the amount to be paid, but not otherwise.

Mitâksharâ: *Publicly* (**Prasiddhe**) and not in secret, in an assembly of gamesters having a keeper of a gaming-house, and in the presence of the officer of gaming appointed by the king, and when the king's portion had been paid by the keeper, the king shall compel a dishonest gamester to pay the amount of the bet won, regarding which there is no difference of opinion. *Otherewise* (**Anyathâ**), a bet won in secret, without a keeper and where the king's portion has not been paid, he shall not cause to be paid to the winners.

The Author mentions the means for a decision when there is a dispute as to success or defeat

Yâjñavalkya Verse 202 (1).

The Judges of disputes (about gambling), as also the witnesses shall be (the gamesters) themselves.

Mitâksharâ: The *judges* (**Drashtâraḥ**) of gambling should be *themselves* (**Ta eva**) *i.e.* the gamesters, *i. e.* should be appointed by the king. There the rule[1] that 'they should be accomplished by learning and study' &c., does not hold. Also, the witnesses in a bet should be selected from the gamblers themselves. The prohibitive rule[2] given in "A woman, a minor, an old man, a rogue &c" does not apply here.

The Author mentions a penalty by way of prohibiting gambling in certain cases

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[1] See Yâjñ. II. 2. p. 3 above.

[2] *i. e.* in Yâjñ. II. 70 p. 106 above.

Yâjñavalkya Verse 202 (2).

Persons gambling with false dice or other instruments shall be branded and banished by the king.

Mitâksharâ: Those who play with false dice or other instruments similarly prepared, for causing a deception *e.g.* by charmed jewels, charms, or medicinal preparations and the like, these the king shall brand with a dog's or other mark, and banish from the kingdom. A special rule has been mentioned by **Nârada**[1] as to banishment, "The king shall banish "from the[2] kingdom, wicked men who play with false dice, after a wreath "of dice has been hung round their necks; for that is the punishment "ordained for them." Moreover, those texts of **Manu**[3] which prohibit gambling *e. g.* "Whoever, either gambles himself or bets or causes it (by "others), all those the king shall punish corporally, as also those *S'udras* "who assume the distinctive marks of the twice-born" and others, even these should be understood to apply to gambling with false dice, as also to gambling where there is no keeper nor the gambling officer of the state.

Yâjñavalkya Verse 203 (1).

Gambling should be ordained under the supervision of a single officer, with a view to (use it as a means of) the detection of thieves.

Mitâksharâ: Moreover, the gambling as discussed above should be ordained under a single supervision *i. e.* one where the mouthpiece or the hand is one. The meaning is that it should be organised by the king under the supervision of an officer of the State. *With a view to the detection of thieves* (**Taskarajñânakâraṇât**). Having kept in view the object of detecting thieves, as gamblers generally hail from those who amass wealth by theft; and so it should be placed under the supervision of one (officer) with a view to the detection of thieves.

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The Author mentions a rule with a view to extend the laws of gambling to betting on animals

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[1] Ch. XVI. 6.

[2] Dr. Jolly's Edition gives] a different reading *viz.* निर्हरेद्यूतमण्डलात् "shall drive out of the gaming house."

[3] Ch. IX. 224.

Yájñavalkya Verse 203 (2).

This very law should be understood to apply in the case of betting by means of animate beings.

Mitâksharâ: The law as to gambling as has been laid down above: "In a bet when the wager is a hundred (fold) &c," that very law should be understord in the case of *betting with animate beings* **(Prânidyûte)** *i. e.* that which is made by means of wrestlers, rams, buffalos and the like and which is called a *Samâwhaya*.

Here ends the chapter called Gambling and Betting on Animals.

CHAPTER XVIII.

Of Abuse.

Now the Author introduces the law of Abuse. Its definition has been stated by **Nârada**[1]: "Abusive language, couched in offensive and violent "terms, regarding the native country, caste, family, and so forth (of a man), "are termed 'Abuse'." Offensive and violent language about a (man's) country &c.; Violent talk is an *Âkrosh*. *Nyanga* is a disrespectful talk. Language which savours of both these, and which is also abusive and thus causes dismay, is called 'Abuse'. There, 'the natives of *Gauda* are fond of quarelling' is (an instance of) an abuse regarding a country; 'The *Vipras* are an extremely covetous people' is (an instance of) an abuse regarding a caste; 'the members of the *Vis'vâmitra* family are cruel in their acts' is (an instance of) an abuse regarding the family. By the use of the term Âdi, 'and so forth' is also included violent language regarding learned men, or men versed in crafts and the like, used by means of abusing one's own learning, craft &c.

Of that, a three-fold division has been laid down by **Nârada** *viz.* Nishthura &c, with a view to (help in the) discrimination as to the punishments. The characteristics of those divisions also have been stated by the same **Author**[2]: "That, again, is divided into three species, according

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[1] Ch. XV. 1.

[2] Ch. XV. 2-3.

"as it is *Nishthûra* (cruel), *As'lîla* (indecent), or *Tîvra* (sharp). The "punishment for each increases in severity respectively according to the "nature of the insult offered (2). Abuse combined with reproaches should "be regarded as *Nishthura* (cruel); abuse conched in insulting language is "*As'lîla* (indecent); the learned call an abuse *Tivra* (sharp), by which a "man is charged with an offence causing expulsion from caste (3)." "Fy upon you fool! you are a rascal" is (an instance of) an abuse combined with reproaches. Here insulting means ungentlemanly language; censnrable—*e. g.* (imputing) intercourse with a sister &c.—language savouring of such words is called an indecent abuse (*As'ilam*). And violent language imputing an offence of a heinons nature *e. g.* " Thou art a drunkard " are an instance of an abuse called *Tivra* (sharp).

Of these, the Author mentions the punishment of a *Nishthura* abuse towards a man of the same *Varṇa*

Yâjñavalkya Verse 204.

He, who, by true, untrue or ironical statements ridicules persons as wanting in limbs, or an organ of sense, or suffering from a disease, shall be fined thirteen and a half paṇas.

Mitâksharâ: *Wanting in a limb* (**Nyûnângaḥ**) *i. e.* deprived of a hand or a foot &c. *Wanting in an organ* (**Nyunendriyâḥ**) *i. e.* being without an eye, or an ear &c. *Suffering from a disease* (**Rogiṇaḥ**) *e. g.* a skin disease, or leprosy &c. Of these whether by true, untrue or by an ironical praise *e. g.* when one man says about another that "this man who is devoid (of the use) of both the eyes, is blind" that is (an instance of) a true statement. Where however he says, " This man having eyes, is blind" it is (an instance of) an untrue statement. Where the statement is, "you look beautiful even in your deformity "that is (an instance of) an ironical praise—if a man *ridicules* (**Kshepam Kaoti**) *i. e.* reviles or abuses them, such a man should be fined a half and thirteen *Paṇas*

As for the text of **Manu**[1]: " He who calls another man one-eyed, "lame or the like, even if it be in accordnace with facts, shall be punished "with a fine not[2] less than a *Kârshâpaṇa*.," that has reference to one who belongs to a *Varṇa* notorious for extremely bad behaviour.

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[1] Ch. VIII. 274.

[2] *i. e.* With a minimum of a *Kârshâpaṇa*

When, however, sons &c. abuse mothers or the like, then these should be fined a hundred (as) has been said by the same sage:[1] "He who "defames his mother, his father, his wife, his brother, his son, or his "teacher, and he who gives not the way to his preceptor, shall be "compelled to pay one hundred *panas.*" This rule, moreover, is to be observed in the case of the mother and other elderly (and respectable) persons who are guilty, and in the case of a wife who is innocent.

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The Author states the penalty for an *As'lila* (indecent) abuse

Yâjñavalkya Verse 205.

The King shall compel a man to pay a fine of Twenty-five *panas* who abuses another saying "I shall have intercourse with your mother or sister."

Mitâksharâ: One abusing thus 'I shall have intercourse with your sister or mother,' the King shall compel to pay a fine of twenty-five *panas i. e.* which consists of a twenty plus five *panas,*

Having thus stated the rules for men of equal merits and *Varna,* the Author proceeds with a view to declare the law regarding men of varying merits

Yâjñavalkya Verse 206 (1).

(For the abuse of a man) of an inferior (status) (the fine is) half; and for (the abuse) of others' wives or superiors, (the fine is) two-fold.

Mitâksharâ:—(In the case of an abuse) Of men *of inferior* (*status*) *i. e.* relatively to the person abusing by regard to the inferiority in (the mode of) living and such other qualities, the fine is half. In the present contest, the full fine being twenty-five *'panas,* a fine equal to the half of that *i. e.* twelve and a half should be understood. As for an abuse regarding 'other's wives,' a uniform fine of double *i. e.* twice twenty-five *i. e.* fifty *paṇas* should he understood. Similarly, for an abuse of 'Superiors' *i. e.* of those who are relatively superior, in learning and conduct, to the person (abusing), the fine shall also be fifty *paṇas*.

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[1] Ch. VIII. 275.

The Author states the rule for determining the penalty for mutual abuse between men of different *Varṇas* such as the *Mûrdhâvasikta* and others

Yâjñavalkya Verse 206 (2).

The determination of the penalty should he made by regard to the superiority or inferiority of the *Varṇa* and *Jâti*.

Mitâksharâ: *Varnaḥ i. e.* a Brâhmaṇa &c. *Jatis i. e.* the *Murdhâvasikta* and others. *Varnaḥ* and *jâtayaḥ* (joined together make up the compound) *Varṇa-jatayaḥ*. 'Superior, and inferior' (joined together make up the compound) 'Superior and inferior'. *Varnajâtayaḥ* which are 'superior and inferior' (when joined together make up the compound expression) '*Varṇas* and *jatis* which are superior and inferior'. In the case of an abuse being mutually committed by these *Varṇas and jâtis which are superior and inferior* (**Varṇajâtyuttarâdharaiḥ**) *the determination of the penalty* (**danḍasya praṇayanam**) *i. e.* the inference should be understood to be made by reference to the maximum penalty.

It appears that by particularly specifying 'Superiors and inferiors,' the determination of the penalty is to be made also by reference to the relative superiority or inferiority (of the parties), *e.g.*[1] for abusing a *Mûrdhâvasikta* who is inferior to a *Brâhmaṇa*, but superior to a *Kshatriya*, a *Brâhmaṇa* deserves a penalty which would be slightly above fifty *paṇas* whice is the penalty for the abuse of a *Kshatriya* viz. seventy-five paṇas. A *Kshatriya* also for abusing him[2] becomes amenable to a fine which would be slightly less than one hundred paṇas which is the penalty for an abuse of a *Brâhmaṇa viz.* Seventy-five paṇas. A *Murdhâvasikta* also deserves the same fine for an abuse of (either of) these two. In the case of an abuse mutually between a *Murdhâvasikta* and an *Ambashtha* the same penalties shall be understood respectively as would be the case in an abuse mutually between a *Brâhmaṇa* and a *Kshatriya*. Similar punishments should be inferred in other cases also.

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[1] In the instances given the Author has illustrated the rule by taking the cases of abuse by the lower and higher tribes.

[2] *i. e. a Murdhâvasikta*; see Ch. IV. A'chârâdhyâya of Yâjñavalkya.

Having thus stated the penalties in the case of all the *Varṇas* the Author mentions a penalty for an abuse among the Varṇas again, but by reference to the *Pratiloma*[1] and *Anuloma* order .

Yâjñavalkya Verse 207.

In case of the abuse of one of a superior class, the fine is two-fold and three-fold (respectively), and of one of a lower class, it is to be reduced in the ratio of a half (respectively).

Mitâksharâ: *Abuse* (**Apawâdâḥ**) *i. e.* vilification. Abuses by persons belonging to an inferior class are *abuses of one of a Superior class* (**Prâtilomyâpawâdâḥ**). *In these cases* (**Teshu**) *e. g.* for a *Kshatriya* or a *Vais'ya* abusing a *Brâhmaṇa*, the fines should be understood respectively to be a double of that mentioned in the foregoing text[2] laying down a double *i. e.* of fifty paṇas ; so that double *i. e.* a hundred, and a treble *i. e.* a hundred and fifty paṇas (shall be understood).

In the case of an abuse of a *Brâhmaṇa* by a *Sûdra*, there is either corporal punishment or cutting off of the tongue as says **Manu** :[3] " A " *Kshatriya* having defamed a *Brâhmaṇa* shall be fined one hundred " (*Paṇas*); a *Vais'ya* one hundred and fifty or two hundred, while a *S'ûdra* " shall make himself amenable for corporal punishment. "

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In the cases also of a *Vais'ya* and a *S'ûdra* who are lower down a *Kshatriya* by one or more than one class (respectively), by parity of reasoning, the penalty for abusing a *Kshatriya* should be understood to be a hundred and a hundred and fifty (*paṇas*). For a *S'ûdra* abusing a *Vais'ya*, a hundred (paṇas, shall be the fine).

In the cases of abuse of the lower classes *e. g.* in an abuse of a *Kshatriya*, a *Vaiśya* or a *S'ûdra* by a *Brâhmaṇa*, *of that* (**Tasmât**) *i. e.* of the penalty for a *Kshatriya* abusing a *Brâhmaṇa viz*: of a hundred (*paṇas*), a reduction of a half should be made in the case of each class respectively, and the remainder *i. e.* fifty, twenty-five, and twelve and a half (*paṇas*), should be the fine, respectively, for a *Brâhmaṇa*. That has been stated by **Manu**[1] : "A *Brâhmaṇa* shall be fined fifty (*paṇas*) for defaming a *Kshatriya* ; in "(the case of the abuse of) a *Vaiśya* the fine shall be twenty-five (*paṇas*); "in (the case of) a *S'ûdra* twelve." In the case of an abuse by a *Kshatriya* of a *Vaisya* or a *S'ûdra*, the fines respectively shall be fifty and twenty-five (*paṇas*). And in an abuse by a *Vais'ya* of a *S'ûdra* a (fine of) fifty (*paṇas*). Thus the law should be understood, *Vide* the text of **Gautama**[2]: "(The fine in the cases) of a *Kshatriya* and a *Vaiśya* shall be similar as "in the case of a *Brâhmaṇa* and a *Kshatriya* (respectively)," and also under the text of **Manu**[3]: "A *Vaiśya* and a *S'ûdra* must be punished "exactly in the same manner according to their respective castes."

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[1] 'in descending and ascending order.' See Yâjñ. A'chârâ. Ch. IV.

[2] *i. e.* in Yâjñ. II. 206 (1) above p. 344.

[3] Ch. VIII. 267.

The Author mentions again a rule regarding a *Nishthûra* abuse

Yájñavalkya Verse 208.

For an abuse threatening injury to the arm, neck, eye, or thigh, the fine shall be a hundred; and a half of it in (the case of) the foot, nose, ear the hand, or the like."

Mitâksharâ : For an injury to the arm &c. each by a threatening abuse *i. e.* for threatening by words *e. g.* in the form "I shall lop off your arm &c." 'a hundred' (**S'atyaḥ**) *i. e.* a fine limited by a hundred shall be understood. In the case of a verbal threat of an injury to the foot, nose, ear, hand, or the like,—by the use of the word *Âdi* 'or the like' (are also included) the hips and the like— *half of that* (**tadardhikaḥ**) *i. e.* half of that *i. e.* a fifty *paṇas*, should be understood.

Yâjñavalkya Verse 209.

When, however, a feeble person speaks like that, he shall be fined ten *paṇas* ; Similarly, one able should be asked to furnish security for the safety of him.

Mitâksharâ : Moreover, when he who is reduced in strength on account of fever or a like cause, threatens another with the words "I shall lop off your arms and other limbs" or the like, he shall be fined ten *paṇas*.

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[1] Ch. VIII. 268

[2] Ch. XII. 14.

[3] Ch. VIII. 277.

When, however, one has capacity and threatens as before another person who has been reduced in strength, he should be compelled to furnish security for the safety of the weak person for the period after the (infliction of the) fine of a hundred &c, mentioned before.

The Author mentions a penalty in the case of a *Tivra* abuse

Yâjñavalkya Verse 210.

In the case of an abuse involing degradation from caste the fine is that for a middle *Sâhasa*. For (an abuse) imputing a secondary sin, however, he shall be compelled to pay the fine for the lowest *Sâhasa*.

Mitâksharâ : In the case of men belonging to the *Varṇas*, an abuse of them involoving their degradations *e. g.* the offence of Brâhmicide &c, the fine shall be as that for a middle *Sâhasa*. For an abuse, however, imputing the commission of a secondary sin *e. g.* 'Thou art a cow-killer' or the like, he shall be fined as for the lowest *Sâhasa*.

Yâjñavalkya Verse 211.

For an abuse of a *Brâhmaṇa* learned in the three Vedas, the king, or the gods, the fine shall be (as for) the highest Sâhasa; the middling, (for an abuse) of the castes or the *Pûgas*; and the lowest (for an abuse) of the village or the country.

Mitâksharâ : Moreover, *Brâhmaṇas* learned in the three *Vedas i. e.* accomplished by learning the *Vedas*. For an abuse of these, of the kings, and of the gods, the fine shall be (as for) the highest Sáhasa. Moreover,

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for an abuse of the *Pûgas i. e.* associations of the castes such as the *Brâhmaṇa*, the *Murdhâvasikta* and others, the fine shall be (as for) a middling Sáhasa. In the case of an abuse of a village or the country the fine shall be understood to be (as for) the lowest Sâhasa each.

Here ends the Title of Law called 'Abuse,'

CHAPTER XIX.

Assault.

Now begins a chapter called Assault. Its characterstics have been stated by **Nârada**[1]: "Injuring the limbs of another with a hand, foot, "weapon or otherwise, or defiling him with ashes or the like, is termed "Assault". That injury *i. e.* striking and causing pain to another's limbs *i. e.* (also) to movable and immovable property, by means of the hand, foot, weapon or otherwise—by the use of the word 'otherwise' *Adi i. e.* (also) by means of stones &c.—; similarly that defilement by means of ashes—by the use of the word *Âdi* 'or the like', by means of dust, mud, faces also—which causes mental pain on account of the (vile) touch; both these are known as 'Assault'.

That by means which an injury is caused is a *Danḍa i. e.* the body; a pârushya *i. e.* inimical behaviour by means of it towards movable property or the like, is called *Danḍa-pârushya* (Assault).

Having, moreover, stated its threefold division, distinguished by the raising of the hand &c., a second threefold division again has been stated by[2] **the same sage** by regard to the theefold acts regarding articles of small, middling or superior value: "There are three species of that also "as it may be either small, middling or extreme, according as it consists in "the raising (of a hand or weapon), or in an unexpected attack, or in "striking a wound (5). Stealing articles of small, middling, or superior "value, is called the three *Sâhasas*; there the thorny weeds should be extirpated." 'An unexpected attack' *i. e.* striking one who has not the least warning (about it). Only three Sâhasas *i. e.* three kinds of *Sâhahas.* *i. e.* daring deeds *e. g.* Assaults.

Moreover, when abuse or assault have once commenced, whoever, of the two contending parties, forbears, for such a one, not only that there is no punishment, but he is indeed to be respected. Similarly, for one who first began the quarrel there shall be a higher punishment. Also when after the quarrel has commenced, he who follows up his attack is liable to be punished.

And when it is not possible to discriminate between the guilt of the two, the fine shall be equal. Moreover, in the case of an insult offered to the *Âryas* by the *S'wapachas* and the like, the Good[1] people themselves have authority to levy a fine; if they are unable, the king should indeed punish them, and not (merely) receive a fine. Thus, the five rules of procedure have been mentioned[2] by the same **Sage**

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[1] Ch. XV. 4.

[2] Ch. XV. 5-6.

"For both kinds of these, a five-fold rule of procedure has been laid down: When after an altercation has once commenced, and both have been excited to a high pitch, he who forbears is respected; and he who pushes on (the quarrel) deserves punishment. He who is the first to offer an insult is decidedly criminal; he who returns the insult is likewise culpable; but for him who began the quarrel, the punishment shall be heavier (9). When both parties are implicated equally, he of the two shall receive punishment who follows up his attack, whether he was (originally) the aggressor or the defendant (10). When two parties have been guilty of insult, and both have commenced to quarrel at the same time, they shall suffer the same punishment, in case that no difference (in their respective culpability) becomes apparent (8). If a *S'wapâka*, *Shanda*, *Chandâla*, cripple, one who maintains by killing (beings), an elephant-driver, a *Vrâtya*,[3] a slave, transgress[4] their limit and offer an insult to the teacher, preceptor or the king, they shall instantly be punished corporally (11 and 12). Any one of the better class whom these persons offer an insult, may himself administer the punishment. The king has[4] nothing to do with their punishment (13). For these people are the refuse of human society, and their property (likewise) savours of impurity. Therefore the king shall inflict corporal punishment upon them, and he must not (merely) punish them with a fine (14)."

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Premising the necessity of establishing an assault of the character thus described, the Author mentions the means of dealing out punishment when there is a doubt about it

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[1] The good men themselves shall punish them. But if they are unable then the king shall chastise them and not merely remit with a fine. *Asahâya.*

[2] Ch. XV. 7-14.

[3] One deprived of the caste for the non-performance of the ceremony of initiation. These are again admitted into the caste by the performance of a rite known as the *Vrâtya-stoma.* It is also the descriptive name used in reference to the caste which originated from a *S'ûdra* father and a *Ksatriya* mother.

[4] Dr. Jolly reads thus: गुर्वाचार्यातिगेषु च (11) मर्यादातिक्रमे &c. (12) "or one who treats a Guru or spiritual teacher with disregard" "should offend a superior &c" (12).

Yajñavalkya Verse 212.

In the case of an assault to which there were no witnesses, the point at issue should be determined by means of marks, by probabilities by popular report, and the like, lest the mark should be counterfeited.

Mitâksharâ : When, any one complains to the king thus, " I was beaten by such a one in secret," then *by means of marks* (**chinhaiḥ**) *i.e.* signs indicating colour &c, on the body, by *probabilities* (**yuktyâ**) by regard to the relation of cause and effect, by *popular report* (**Âgamena**) *i. e.* from the talk among the people—by the use of the word *cha* ' and the like,' by an ordeal also—and fearing lest there may be a counterfeit mark, the determination should be made.

Having thus determined the particular means, the Author mentions a special punishment

Yâjñavalkya Verse 213 & 214.

For throwing ashes, mud, or dust the punishment recorded is ten *paṇas* ; and double that amount for attacking with an impurity a heel, a spittle. This if (the offence be comitted) against one of an equal class. But (it would be) doulbe (if the offence be committed) against another's wives, or against persons of higher orders ; ' if, against persons of ' lower classes, a half of the fine ; there shall be no fine for an offence committed through infatuation, drunkenness, or the like.

Mitâksharâ : He who throws ashes, mud or dust at another should be compelled to pay a fine of ten *paṇas*. By impurity is also included tears, phlegm, nails, hair, ear-wax, rheum of the eyes, and leavings at the meals. Heels, (**Pârshṇiḥ**) the hind part of a foot. *A spittle* (**Nishthutam**) *i. e.* the water thrown out of the mouth. For an assault with these, a fine twice of that *i. e.* the fine mentioned before viz : (of) ten *i. e.* twenty paṇas, must be understood. Again, a special rule has been stated by **Kâtyâyana** in cases of Assault by feces &c. " It is declared to be four-" fold, when the assault is committed by (means of throwing) the " vomit, or urine, or feces or the like, on the lower extremities ; six-fold if " thrown upon the middle extremity of the body ; but eight-fied if upon " the head. " By the use of the term *Âdya* ' or the like, are included fat, semen, blood, the marrow of the bones, and flesh &c. (213).

The fine thus mentioned before should be understnod in the case of persons of the same tribe. In the case of assaults on the wives of others, it applies without this differentiation. Also, in (the case of assaults against) persons of a higher order *i. e.* higher in learning or conduct as compared with (the actor) himself, a fine must be understood which would be double in amount of that mentioned before *i. e.* of ten paṇas and also of twenty paṇas. In the case of persons of a lower class *i. e.* inferior in learnig &c. as compared with self, a fine half in amount of that mentioned before *i. e.* five paṇas, or ten paṇas, must be understood.

Infatuation (**Mohaḥ**) means mental aberration. *Intoxication* (**Madaḥ**) is the particular condition (which is) produced by the drinking of intoxicating liquor. By the use of the word *Âdi* the possession by a spirit &c. (also are included). When under the influence of these an assault is committed no penalty shall be imposed even when the ashes &c. (actually) touch the body (214).

The Author mentions a penalty in cases of assault by inferior persons (against superiors)

Yajñavalkya Verse 215.

The limb, of one who is himself not a *Brâhmaṇa*, which causes injury to a *Vipra*, must be cut off. When it is raised, the lowest amercement, (*is laid down*) and half of it in (case of) a touch.

Mitâksharâ: *The limb of one who is (himself) not a Brâhmaṇa* (**abrâhmaṇasya**) *i. e.* of a *Kshatriya* or the like, *viz.* the hand, the foot &c. which causes injury to the *Brâhmaṇas*, that should be cut off. Of a *S'udra* causing injury to a *Kshatriya* or a *Vaiśya* even, the punisnment indeed is the cutting off of the limb : " With whatever limb a man of a lower class "does injury to one of a higher class, even that limb of his should be cut off; "this is the command of **Manu**[1]. " From the rule as to the cutting off of the limb of a *S'ûdra* for an offence against any one of the twice-born tribes, by parity of reasoning, the same punishment would accrue to a *Vaiśya* causing any injury to a *Kshatriya*.

When *raised* (**Utgirṇê**) *i. e.* when a weapen &c. is raised with a view to strike, the punishment for the first amercement must be understood.

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[1] Ch. VIII. 279.

Of a *S'ûdra,* however, even for a raising (of the hand &c.), the punishment, indeed, is the cutting off of the hand &c; *vide* the text of **Mauu**[1] : "For "raising a hand or a stick, he deserves the punishment of having his hand "cut off."

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For *touching* (**Spars'ane**) a weapen &c. for raising it, however, *half of it* (**tadardhikaḥ**), *i. e.* half the punishment for the lowest *Sâhasa,* must be understood. In cases of assaults by means of ashes &c, by a *Kshatriya* and a *Vaiśya,* the punishment should be determined by regard to the rule stated in the **text**[2] "In cases of the abuse of one of a superior class, the "fine is two-fold, and three-fold." Even there, a *S'udra* shall, indeed, have his hand cut off, *vide* the text of **Manu**[3]: "If out of arrongance "he spits (on a superior), the king shall cause both his lips to be cut off; "if he urines (on him), the penis; if he breaks wind (against him), the "anus."

Having thus stated the punishment for an offence in the case of persons of lower classes, the Author proceeds again in regard to a person of the same caste

Yâjñavalkya Verse 216.

For holding up a hand or a foot, the punishment shall be ten and twenty *paṇas* (respectively). For threatening each other with a weapon, the punishment shall be the middle amercement for all.

Mitâksharâ: For raising a hand or a foot with the object of striking, the fine shall be understood respectively to be ten *paṇas* or twenty *paṇas.* For raising a weapon with the object of striking each other, in the case of all classes, the middle amercement shall be the fine.

Yâjñavalkya Verse 217.

For pulling out the foot, the hair, the clothes, or the hand (of another), ten *paṇas*; for causing pain by violenty pulling a man caused to be tied in his clothes and trampling him under foot, a hundred (*paṇas*) is the fine.

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[1] Ch. VIII. 280.

[2] Yâjñ. 207 p. 346 above.

[3] Ch. VIII. 282.

Mitâksharâ: Moreover, he who catches hold of the foot, the hair, the clothes, or the hand or any of these and *pulls them out* (**Ullunchati**) *i. e.* violently plucks them, such a one shall be fined ten *paṇas*. Causing pain, pulling, tying in a cloth and trampling under foot (all joined together, make up the compound expression) 'Causing pain, pulling, tying in a cloth and trampling under foot'; for doing that, a man shall be fined a hundred *paṇas*. The purport is this: He who after tying in a cloth, and violently pulling, tramples another under foot, such a man should be compelled to pay a hundred *paṇas*.

Yájñavalkya Verse 218.

The man causing pain without shedding blood by means of a stick or the like, shall be fined thirty-two *paṇas*; double (that) if blood is seen.

Mitâksharâ: Moreover, he, however, who strikes mildly with a piece of wood or mud so that no blood is shed, such a one shall be fined thirty-two *paṇas*. When, however, on account of a hard beating, blood is shed, then he shall be fined twice thirty-two *i. e.* sixty-four *paṇas*. A special rule, moreover, has been pointed out by **Manu**[1] in the case of breaking open the skin, flesh &c. "He who breaks the skin shall be "fined a hundred, as also one who draws out blood. He who breaks the "flesh, six *nishkas*, while he who breaks a bone shall be banished."

Yâjñavalkya Verse 219.

For breaking a hand, a foot or a tooth, and for cutting an ear or nose, the fine shall be the middle (amercement); similarly for laying open a sore, and also for beating almost to death.

Mitâksharâ: Moreover, for breaking a hand, a foot or a tooth, in each case; as also for cutting an ear or the nose, (in each case); for laying open a healed-up sore; and for beating in such a manner that the man becomes almost dead, the middle amercement shall be understood. Here, the similarity of acts should be ascertained by regard to the result of the act.

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[1] Ch. VIII. 284.

Yâjñavalkya Verse 220.

For a restraint in respect of motion, eating, or speech; for an injury to the eye and the like; for a fracture of the neck, the arm, or the thigh, the middle amercement.

Mitâkhsarâ: Moreover, for restraining motion, eating, or speech, for an injury to the eye—and by the use of the term *Âdi* to the tongue also—; *Kandharâ* means the neck; an arm is wellknown. *Sakthi* means the thigh; for fracturing each of these, the fine shall be the middle amercement.

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Yâjñavalkya Verse 221 (1).

When several assault a single person, the fine for them shall be double of that already mentioned.

Mitâksharâ: Moreover, when however, several (people) combining together break the limb of one (man), or do any other similar act, then whatever fine has been laid down for each offence, a fine double in amount of that must be understood in each case respectively. On account of the extreme aggravation of these offences, even in the cases of offences committed against persons of inferior classes, or of higher classes respectively, the reduction or increase is to be determined by reference to this very law of punishment in the order mentioned in regard to the offence of abuse and the offences enumerated thereafter, and laid down in regard to persons of the same class, *vide* the text:[1] "Whatever punishment has "been mentioned for the offence of abuse (and the like) committed "against persons of superior or inferior classes respectively, the same "penalty shall respectively be inflicted by the King in the offences of "assaaut (and the like) also."

Yâjñavalkya Verse 221 (2).

That which had been taken away during the scuffle shall be restored, and a fine double (in value) of that.

Mitâksharâ: During the continuance of the scuffle whatever has been take away by a party should be given back by him. Also a fine double the amount (in value) of the thing taken away, must be paid as penalty for the deprivation.

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[1] Author not known. Bâlambhaṭṭa assigns it to Manu. But it is not found in the available editions of Manu.

Yâjñavalkya Verse 222.

He who causes bodily injury, shall pay the expenses incidental thereto, and shall also pay the fine mentioned in regard to the particular assault.

Mitâksharâ: Moreover, he who causes injury (to another) by beating, shall pay such expenses as may be incurred for dressing and curing the wound, and for medicine and special diet therefor. The fine to be paid is the fine imposed for the particular kind of assault in which the wound was caused, and not merely the amount of the expenses incidental to the wound.

Having mentioned the penalties for assaults upon the limbs of others, the Author now mentions the penalty for the spoliation of external property

Yâjñavalkya Verse 223.

For striking at the wall, or for boring or breaking or demolishing it, he shall be made to pay a fine of five, ten and twenty *paṇas* respectively, and also the expenses (incidental thereto).

Mitâksharâ: For striking at a wall with a club or other similar weapon, or for making a whole in it, or for breaking it into two (sections), the fine shall be understood to be five *paṇas*, ten *paṇas*, and twenty *paṇas* respectively. For demolishing a wall, moreover, all these three fines shall be inflicted cumulatively. Also the amount (of expenses) for rebuilding it shall be paid to the owner.

Yâjñavalkya Verse 224.

One throwing in a house a thing (which is capable of) causing bodily injury or deprivation of life shall be compelled to pay sixteen *paṇas*

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[1] बहिरङ्ग अर्थनाशे. The offences mentioned hitherto refer to a man's अन्तरङ्ग internal property such as hand, foot &c.; now the Author mentions offences relating to his external property. Shortly stated and in terms of the Indian Penal Code, the offences enumerated above are Offences against the Body. The author now enumerates Offences against Property.

for the first, and the middle amercement for the second offence (respectively)

Mitâksharâ: And again, one throwing into the house of another, things which cause bodily injury *e. g.* thorns &c, shall be compelled to pay sixteen paṇas ; while one, throwing things causing deprivation of life *e.g.* poison, snake &c, shall be punished in the middle amercement.

The Author mentions a fine for assaulting beasts

Yâjñavalkya Verse 225.

For causing pain, drawing blood, as also for cutting off branches or a limb of minor beasts, the fine shall be one beginning with two *paṇas* and upwards.

Mitâkhsharâ: In the case of minor beasts such as the goat, the sheep, the deer and the like, for beating causing injury and drawing blood ; *for cutting off the branches* or a *limb* (S'âkhângachhedané)—by the word *S'âkhâ*-branch-are indicated such limbs as are without the circulation of life in them such as the horns &c.—*limbs* (Angâni) such as the hands, the feet and like others. *S'âkhâ* (A branch) and *anga* (a limb) joined together make up the compound expression *S'âkhângam.* For cutting that the fine is (laid down) commencing with two *paṇas* &c. A fine which has in it two *paṇas* is a fine of two *paṇas.* That series of punishments in which a sum of two *paṇas* is the first–*i. e.* the beginning–is a fine 'beginning with two *paṇas* and upwards.' That series of fines moreover is two *paṇas*, four *paṇas*, six *paṇas*, eight *paṇas* and in a similar series, and not as two *paṇas*, three *paṇas*, four *paṇas*, five *paṇas* &c.

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If it be asked how is that? the answer is : By regard to the heinousness of the offence, the three kinds of higher punishments are to be understood as being higher than the lowest punishments. There also, instead of resorting to the numbers three &c. which have not been specifically mentioned, it is better to get at the aggravated penalty by the repetition of the number two which has been specially mentioned. Thus there is no fault.

Yâjñavalkya Verse 226.

For cutting off their genital organs, and for causing death, the middle amercement, as also the price. In the case of superior animals, the fine shall be double in similar cases.

Mitâksharâ: Now for cutting off the genital organs of minor beasts, and for causing their death, the fine shall be the middle amercement; and the price shall be paid to the owner. In the case of superior animals, however *e.g.* the cow, the elephant, the horse and like others, *for similar cases* (eteshu sthâneshu) *i. e.* for beating, or drawing out blood or doing similar acts, a fine double of that mentioned before should be understood.

The Author mentions the penalty for an injury to immovable property

Yâjñavalkya Verse 227.

For cutting off the branches, or the trunk or uprooting entirely the trees which throw down branches having sprouts, as also trees which are the means of livelihood, the fine is twenty *paṇas* and (its) double.

Mitâksharâ: *Sprouts* (Prarohaḥ) *i. e.* shoots; branches having these are 'branches having sprouts;' *i. e.* those branches which when cut off, develop again at each knot of trees, like the bunyan and the like such trees, are called (Prarohas'âkhinaḥ) 'trees which throw down branches having sprouts;' for cutting off the branches of these. That from which the original branches shoot out is called the trunk; for cutting that, as also for cutting up a tree together with its roots, there shall be a fine beginning with twenty *paṇas* and increased by twofold of the previous one.

This is what is (intended to be) said: The three penalties of fine *viz.* twenty *paṇas*, forty *paṇas*, and eighty *paṇas* are inflicted respectively for the offences of cutting off of the branches and for the offences following in their order.

And even of trees which do not 'throw down branches having sprouts,' but which are a means of livelihood *e. g.* the mango tree and the like, fines similar to these mentioned before must be understood for acts similar to those specified above *i. e.* in the case of trees which are not the means of livelihoood, nor do throw down branches having sprouts.

The Author mentions a rule regarding particular trees

Yâjñavalkya Verse 228.

In the case of trees growing in a sacrificial place, a cemetery, a boundary, a sacred place, or a temple, and trees well known, the fine is twofold.

Mitâksharâ: For cutting off the branches or for doing like acts towards trees growing on a sacrificial place or in a similar other place, a fine twice that mentioned before. So also in the case of trees which are wellknown such as the *pippala*,[1] *palâs'a* and the like, the fine is twofold.

The Author mentions a rule regarding creepers &c

Yâjñavalkya Verse 229.

In the case of injury in the aforementioned parts to[2] *Gulma*, *Guchchha*, *Kshûpa*, *Latâs* **(creepers),** *Pratâna*, *Oshadhi* **and** *Virudh*, **the fine is half of that before mentioned**

Mitâksharâ: Gulmâḥ, such as the *Mâlati*[3] *plant* and the like, are those creepers which do not develop into any considerable length. **Guchchâḥ** are not in form like creepers, nor are they generally straight and smooth, *e. g.* the *Kurantaka*[4] plant and like others. **Kshûpaḥ** *e. g.* the *Karavira*[5] plant or the like, which are generally straight and smooth. **Latâḥ** or creepers which develop into considerable lengths such as the grape, *Atimukta*[6] &c. **Pratânâḥ** are creepers without knots or offshoots, and growing straight such as the *Sâriva*[1] and others. **Oshadhayaḥ** are those which develop fruit such as the paddy plant &c. **Virudhaḥ** are those which even when cut grow and develop in various parts such as the *Gudûchî*[2] and the like.

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[1] *Pippala*—is the holy fig tree. *Ficus Religiosa*. *Palâs'a* also called *Kims'uka-Butea Frondosa*. see p. 287 n. 5 also p. 150 n, 3 (above).

[2] These are the several groups of creepers and shrubs with minute distinctions which have been indicated by Vijñânes'vara further on.

[3] मालती (Mâlati) *Echites Caryophyllata*. is a kind of jasmine with white fragrant flowers.

[4] कुरण्टक : (*Kurantakaḥ*) *Ammania Vesicatoria* a species of Amaranth white or yellow in colour and having thorns.

[5] करवीर—(*Karavira*) *Nerium Odorium* a kind of tree with white, red or yellow flowers; known in marathi as the *Kanhera* (कण्हेर).

[6] अतिमुक्त (*Atimukta*) a kind of creeper otherwiso known as *Mâdhavi* (माधवी) (marathi : मोगरा or कस्तुरी मोगरा) represented as twisting itself round the mango tree and as he beloved of that tree. Also the name of a tree *Dulbergia Oujeinensis* (तिनिश). Apte.

In the case of these, for injuries as aforementioned such as cutting *i. e.* lopping off, a fine half of that mentioned before must be understood.

Thus ends the chapter on Assault.

CHAPTER XX.

Sa'hasas or Heinous Offences.

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Now, intending to discuss the title of law called the *Sâhasa*, the Author first states its definition

Yâjñavalkya Verse 230 (1).

When common property is forcibly carried away, that is called a *Sâhasa*.

A deprivation of property which is *common* (**Sâmânya**) *i. e.* which is held in common, or, (also) having regard to its general characteristic of being incapable of appropriation at will, which is another's property is a **Sâhasa. Whence?** *on account of a forcible carrying away* (**Prasabha haraṇât**)–in short, on account of a deprivation by a show of force.

This is what is (intended to be) said: By disregarding the Royal sanction, or the protest of the people, whatever act of beating, or assaulting the wife of another and the like is committed in the presence of State Authorities or the ordinary people, all that is a *Sâhasa*;

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[1] सारिवा—This plant cannot be identified.

[2] गुडूची (*Gudûchî*)—Marathi–गुळवेल—*Cocculus cordifoleus*—a very useful plant generally growing on trees; it is a drug of considerable importance in the Indian medicine.

this is the nature of a Sáhasa. Therefore, even in the case of a deprivation of property which is common or which is another's, there is a *Sâhasa* on account of the same being done by means of a show of force.

The characteristics of a *Sâhasa* have been described by **Nârada**[1] also: "Whatever act is performed by force by persons inflamed with (the "pride of) strength is called a *Sâhasa*; *Sâhasa* means force in this world." The *Sâhasa* of this description, although it is closely allied to theft, abuse, assault, and seduction of women, still differs from these on account of the special element of show of excessive force, and has been specially mentioned with the object of (laying down) excessive punishments.

Of this also, after having laid down a threefold division into the lowest, and the others, with a view to demonstrate the different punishments, the characteristics have also been described by the same **Sage**[2]: "That again "is declared to be threefold in the *S'âstras viz.* (*Sâhasa of*) the first, mid-"dlemost, and the highest degree. The definition thereof has been given "separately (3). Destroying, reviling, disfiguring or otherwise (injuring) "fruits, roots, water and the like, or agricultural utensils, is declared to be "a *Sâhasa* of the first degree (4). (Injuring) in the same way clothes, cattle, "food, drink, or household untensils, is declared to be a *Sâhasa* of the "middlemost degree (5). Taking human life by means of poison, weapons "and the like, indecent assault on another man's wife, and whatever other "(offences) encompassing life (may be imagined), is called a *Sâhasa* of the "highest degree (6). The punishment to be inflicted for it must be propor-"tionate to the heaviness of the crime, (so however as) not to be less than "a hundred (*Paṇas*) for a *Sâhasa* of the first degree; whereas for a *Sâhasa* "of the middlemost degree the punishment is declared by persons acquaint-"ed with the *S'âstra* to be not less than five hundred (*paṇas*) (7). For "a *Sâhasa* of the highest degree, a fine amounting to no less than a thousand "*paṇas* is ordained. (Moreover) corporal punishment, confiscation of the "entire property, banishment from the town and branding, as well as ampu-"tation of that limb (with which the crime had been committed) is declared "to be the punishment for *Sâhasa* of the highest degree." Corporal punishment and the like punishment in a *Sâhasa* of the highest degree should be administered by a discriminating regard to the offence committed.

Among these, the Author mentions the penalty for a *Sâhasa* which is in the form of deprivation of another's property.

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[1] Ch. XIV. 1.

[2] Ch. XIV. 3-8.

Yâjñavalkya Verse 230 (2).

The fine is twice the amount of the value of it, but four-fold when (the offence is) denied.

Mitâksharâ: *Of it i. e.* of the thing taken away, twice the amount of the value shall be the fine. He, however, who having committed a *Sâhasa* denies saying "I did not do," for such a one, a fine is inflicted which is four times the value of the thing.

From this very rule where a special penalty is laid down, it appears that the general rules of punishment laid down in connection with *Sâhasa* of the first degree and the like, are applicable to cases other than (where there has been) the deprivation (of property).

The Author mentions a rule regarding one causing a *Sâhasa* (to be committed)

Yâjñavalkya Verse 231.

He who causes the commission of a *Sâhasa*, shall be made to pay a double fine; and he who causes it by declaring "I shall pay" shall be made to pay fourfold.

Mitâksharâ: He, however, who says (to another), "Commit *Sâhasa*", and (thus) causes a *Sâhasa* to be committed, shall be made to pay twice the amount of penalty imposed upon the actor himself. He moreover, who says "I shall pay you money" and thus causes a *Sâhasa* to be committed, such a one shall be compelled to pay a fourfold fine, on account of the aggravation of the offence.

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The Author mentions rules regarding particular *Sâhasikas.*

Yâjñavalkya Verses 232 & 233.

He who abuses or disobeys the venerable, who beats his brother's wife, who does not give what is promised, who breaks open a house (which is) sealed (232);

Or who does an injury to his neighbour, or blood-relations and the like, for all such offendors fifty *paṇas* is the fine; this is the invariable rule.

Mitâkshâra: *Of the venerable* (arghasya) *i. e.* those who deserve to be respected *e. g.* the teacher &c, he who offers an abuse or transgresses their commands, as also he who beats his brother's wife; similarly one who does not repay an amount which was promised *i. e.* agreed upon; he, also, who breaks open a house which is sealed; also, he who does an injury to the owners of houses or fields adjoining his house or field, or to blood relations *i. e.* those born in his own family—and by the use of the term *Âdi* 'Also' (he who causes injury) to the inhabitants of his own village or country—all these shall be punishable with a fine of fifty *paṇas*.

Yâjñavalkya Verses 234-237.

He who wantonly consorts with a widow, who does not run (in response) to a call (for help), who causelessly raises a cry (for help), he, who, being a Chandâla, touches men of the higher classes (234);

Who feeds S'ûdra ascetics on (the occasions of) religious or obsequial ceremonies, who pronounces an improper oath, who being unqualified, does an act which can be performed (only) by those who are qualified (235);

As also he who destroys the virility of a bullock or inferior beasts, who conceals common property, who destroys the fœtus of a female slave (236);

Or whoever being the father, the son, the sister, and a brother, the husband and the wife, the preceptor and the pupil, abandon each the other when (that other is) not degraded, shall be fined a hundred *paṇas* (237).

Mitâkshâra:—Moreover, he who has connection with a widow (merely) by self-will without a *Niyoga* or a proper appointment; or who, upon a cry for help being raised by persons frightened by thieves and like others, does not run for help even when he is able, as also he who causelessly raises a cry (for help); he, who being a Chandâla touches a Bráhmaṇa or others; also he, who, feeds S'ûdra ascetics such as the Digambaras and others, at religious or exequial ceremonies; he, also, who pronounces an improper oath *e. g.* "I shall take my mother" &c; similarly, one who being unqualified *e. g.* a S'ûdra and the like, does an act *e. g.*

study &c, which can be done only by one qualified. A bullock means a strong bull; 'minor beasts' such as a goat &c.: one who destroys the virility *i. e.* the procreative power of these. In the case of the reading (one who destroys the virility) 'of trees and minor beasts &c.'—(it should be interpreted thus:—) one who causes the destruction of the fruits or budding blossoms of trees &c, by means of sprinkling asafœtida or other drugs; he who conceals common property, *i. e.* who causes a deception in regard to property which is common; as also one causing the abortion of a female slave: as also those who being related as the father &c, abandon each the other without being degraded, all these severally deserve to be fined one hundred *paṇas* each.

Thus ends the chapter on Sâhasas

On the occasion of discussing Sâhasas, the Author mentions a penalty for similar offences by the washermen and others

Yâjñavalkya Verse 238.

A washerman wearing the garments of another shall be fined three *paṇas*; and in cases of a sale, hiring out, pledge, or a loan on request, ten *paṇas*.

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Mitâksharâ: *A washerman* (**Nejakaḥ**) is one who cleans clothes (by washing); such a one, if he himself puts on clothes, made over to him for being washed, then, should be fined three *paṇas*. He, moreover, who sells them, or hires out *e. g.* (with an agreement such as): "This cloth is being given to you for such a period, so much money should be given to me", and who thus lets out on hire, or makes a pledge of it, or gives it to his relatives and friends upon request, such a one shall be fined ten *paṇas* for each offence. Those clothes moreover, must be washed on a smooth plank of the silk-cotten tree (*S'âlmali*), not on a stone, and they should not be exchanged,[1] nor should they be allowed to be worn in his own home, otherwise he shall be punished, *vide* the text of Manu:[2] "A washerman shall wash gently on a smooth board of the silk-cotton

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[1] व्यत्यास means inversion, perversion; Bâlambhaṭṭa.

[2] Ch. VIII. 396.

"wood; he shall not return the clothes (of one person) for the clothes (of "another), nor allow any body (but the owner) to wear them."

When moreover, he destroys them through a mistake, then the rule stated by **Nârada**[1] should be observed : " An eighth part of its value is "the depreciation of a wearing apparel washed for the first time; a "fourth, when (it is washed) twice; a third, (when washed) three "times; and a half (when it is washed) four times (8). After the depreciation of a half (of the value), a quarter shall be (considered as) "reduced thenceforth, till the fringe is tattered, and the cloth becomes "worn. In the case of a tattered cloth there is no rule regarding the "reduction of its value." Thus, for a cloth which was purchased for eight *paṇas* and washed only once, and which is lost, the price to be paid should be the *paṇas* minus an eighth part—*i. e.* one *paṇa*—(of the cost price); for a twice-washed cloth however, less by a quarter, and for a thrice-washed cloth, less by a third part; for a cloth washed four times, a half (of the price) *i. e.* four *paṇas* should be given. Thereafter, the remaining fraction of the price lessened by a quarter for each wash should be given, until it becomes tattered. Of a tattered cloth, moreover, which is destroyed, the price should be determined at the option.

Yâjñavalkya Verse 239.

For witnesses in a dispute between a father and a son, the fine is three *paṇas*. Also for him who engages himself therein, for such a one also the fine is eight-fold.

Mitâksharâ: In a dispute between a father and a son, he who undertakes to be a witness, and does not ward off the dispute, such a one shall be fined three *paṇas*. He, moreover, who in a dispute with a wager between them, becomes a surety—and by the use of the term *cha* 'also,' he who fans the dispute between them, even he,—shall be fined an amount eight times three *paṇas* *i. e.* twenty-four *paṇas*. In the cases of (a dispute between) a husband and a wife, or like others, this same (rule as to) fine must be followed.

Yâjñavalkya Verse 211.

He who falsifies scales royal mandates, measures, and also standard coins, and also he who uses these, shall (both) be forced to pay the highest amercement.

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[1] Ch. IX. 8-9.

Mitâksharâ: *Scales* (**Tulâ**) *i. e.* the weighment rod. *A Royal mandate* (**S'âsanam**) has been described[1] before. *A measure* (**mâna**) such as a *prastha*,[2] a *droṇa*, and the like. *A Standard Coin* (**nâṇakam**) *i. e.* (money) stamped with (the royal) mark or the like, such as *a dramma*[3], *a nishka*, or the like.

In the case of these, he who *falsifies them*(**kûtakṛit**) *i. e.* who makes them different from the general standard of the country, whether less or more, or stamps (money such as) *dramma* and the like in an unusual manner, or alloys it with copper or other (base metal), and he also who uses them knowing them to be false, both of these shall each be fined in the highest amercement.

The Author propounds a rule regarding the examiner[4] of coins

Yâjñavalkya Verse 241.

He who declares good money bad, as also he who declares bad money good, that examiner of coins shall indeed be compelled to pay the highest amercement.

Mitâksharâ: That examiner of coins, moreover, who declares a *dramma* or other coin good even when it is alloyed[5] with copper, or the like, or declares a good coin to be false, such a one shall be fined in the highest amercement.

The sage mentions a rule regarding a physician

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[1] *i. e.* in the A'chârâdhyâya Verses 318, 319, 320. Mr. Colebrooke gives—"Market rates-(literally, Commands), the kings written precepts regulating market rates."

[2] *Prastha, Droṇa*—kinds of measures. A *Prastha* is a measure having thirty-two *palas*; while a *droṇa* is either the same as a an *Âdhaka*, or equal to 4 *âdhakas* or $\frac{1}{16}$th of a *khâri*, or 32 or 64 *shers*.

[3] *Dramma* (Colebrooke reads *bherma*)—a *drachma* (c.f. the greek *drachm*).

Nishka—A golden coin of different values, but generally taken to be equal to one *Karsha* or *Suvarṇa* of 16 *mâshâs*; or also a weight of gold equal to 108 or 150 *suvarṇas*.

[4] Colebrooke reads as if the introductory remark of Vijñânes'vara referred to the coins and not to the person testing them.

[5] *i. e.* which is over-alloyed &c.

Yajñavalkya Verse 242.

A physician falseley posing himself as such, shall be fined in the first amercement in the case of lower animals; in the middlemost, in the case of men; and in the highest amercement, in the case of royal persons.

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Mitâksharâ: *A physician* (**Bhishak**), moreover, who *falsely* (**mithyâ**) *i. e.* even when he is ignorant of the science of medicine, for the purpose of making out a livelihood, poses himself as a duly qualified physician, and treats medically lower animals, men, or royal persons, such a one shall be fined in the first, middlemost and the highest amercements respectively.

There also, the amount of the fine, whether it should be small or great, must be determined in the cases of lower animals &c. by regard to the value (of the particular beast), or the *Varṇa* (of the man), or the close relationship to the king (in the case of royal persons).

Yâjñavalkya Verse 243.

He, moreover, who restrains one who ought not to be restrained, or releases one who is restrained before the decision (in his case) is arrived at, such a one shall be fined in the highest amercement.

Mitâksharâ: He, moreover, who restrains without the king's command one who does not deserve to be restrained, and who is innocent; as also he who releases one, who was restrained being summoned in concetion with a trial at law, even before yet the trial was concluded, shall be compelled to pay the highest amercement.

Yâjñavalkya Verse 244.

He who abstracts one-eighth share by a (false) measure or balance, such a one shall be compelled to pay a fine of two hundred *paṇas*, and (proportionately) determined (according) as the loss is greater or less.

Mitâkharâ; That grocer, moreover, who, from paddy, cotton or any other vendible commodity abstracts an eighth part by (using) a false measure, or a false balance, or by any other means, such a one shall be fined two hundred *paṇas*. The smallness or greatness of the fine must be[1] determined by regard to the greater or less quality of the portion abstracted.

Yâjñavalkya Verse 245.

He who adulterates with articles of inferior quality, medicines, oil, salt, perfumes, grain, sugar and the like, which are kept for sale, shall indeed be compelled to pay sixteen *paṇas*.

Mitâkharâ: *A medicine* (**Bheshajam**) *i. e.* medicinal drug; *Oil* (**Snehaḥ**) such as clarified butter and the like; 'Articles of perfumery' such as *Us'ìra*[2] and the like. The term *Âdi* 'and the like' comprehends asafœtida, pepper and the like. In the case of these, the fine for mixing inferior substances with these, for the purpose of sale, is sixteen *paṇas*.

Yâjñavalkya Verse 246.

When earth, hide, gem, yarn, iron, wood, bark, or cloth, which is not of good quality, is made (to appear as) of good quality, the fine is eight times the amount of the sale.

Mitâksharâ: Moreover, when a superior quality does not exist in articles such as hide &c, it is regarded as being *not of good quality* (**Ajâti**); for *giving such a thing* the appearance of (a substance of) *good quality* (**Jâtikaraṇe**), *i. e.* for the purposes of the sale, making it resemble a thing of a valuable kind, by the addition of (a different) odour, colour or juice; as for instance, counterfeiting fragrant *Âmalaka*[3] by adding the odour of the *Mallikâ*[4] flower to (a piece of) earth; or the tiger-skin by adding vivid colours to a cat-skin; or a ruby by tinging a *Sphatika* bead with another hue; or a silken thread, by giving a glossy appearance to a cotton thread; or silver, by bringing on a bright colour by polishing black iron; or sandal wood by adding the odour of sandal to a piece of *Bilwa*[5] wood; or passing the bark of *Kankola*[6] for that of a clove; or counterfeiting a silken cloth by creating a glossy appearance on a cotton cloth; (in such cases) the fine must be understood to be eight-fold of the commodity (offered) for sale *viz.* the earth, leather and the like, which is made to resemble (another commodity).

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[1] So that if the fraud be less than an eighth portion, the fine shall be less than two hundred *paṇas*; and greater if the fraud exceed the eighth portion.

[2] Known as *khus* or *wâlá* (वाळा in marathi)—the root of the (वरिण) *Viraṇa* grass—*Andropogon muricatus*.

[3] Known in marathi as आंवळा (A'vlâ) *Nyctanthes undulata*.

[4] *Mullikâ* is a kind of jasmine. *Phyllanthus emblica*.

[5] Known as the *Bela* (बेल) tree. *Aegle Marmelos* or wood-apple.

[6] *Kankola* is the name of a plant bearing a berry, which also is known as *kankola*.

Yâjñavalkya Verses 247-248.

He who pledges or sells a sealed casket or a valuable vessel, which is artificially prepared, shall be fined thus (247):

For (a thing the value of which is) the fraction of a *paṇa*, fifty (*paṇas*), and for a *paṇa*, a hundred; for two *paṇas*, two hundred; and when the value is higher, (the fine is) higher.

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Mitâksharâ: Seal means a cover. That which has the cover of a seal is *a sealed* (**Samudra**) casket. *artificial preparation* (**Parivartanam**) *i. e.* transformation. He who exhibits one casket (*i. e.* one) containing pearls, and changes it by a sleight of hands for another casket filled up but containing *Sphatikas* (or glass stones), as also he who counterfeits a valuable commodity such as the musk and the like, and either sells it or deposits it as a pledge, the determination of fine for such a one should be understood as follows: If the actual price of the counterfeited musk or other article is the fraction of a *paṇa* (**paṇe-bhinne**) *i. e.* less *i. e* to say, if its value is less than a *paṇa*, the fine for a sale in which the counterfeited article was sold shall be fifty *paṇas*. In the case where however the price is a *paṇa*, the fine shall be a hundred, and in the case of an article of the value of two paṇas, two hundred; and in this manner the amount of the fine should be increased according as the price is (determined to be) higher.

Yâjñavalkya Verse 249.

For (traders) combining to maintain a price to the prejudice of labourers and artisans, although knowing the rise or fall of the prices, the fine shall be the highest amercement.

Mitâksharâ: Although knowing the increase or decrease in the market rates as regulated by the king, if traders combine *i. e.* join together, and out of greed for profit, maintain another price, which is detrimental to the *labourers* (**kârûṇâm**) such as the washermen and others, or the *artisans* (**S'ilpinâm**) such as painters or sculptors and the like, they shall be fined one thousand *paṇas*.

Yâjñavalkya Verse 250.

For traders combining to obstruct (the sale of) a commodity by (demanding) a wrong price, or for selling it, the fine laid down is the highest amercement.

Mitâksharâ: Moreover, those traders who, combining together, obstruct (the sale of) a commodity arrived from a foreign country by demanding it at a wrong price *i. e.* at a lower value, or sell it at a higher price, the highest amercement or fine for these has been laid down by Manu and others[1].

At what price, then, must a commodity be sold? so the Author says

Yâjñavalkya Verse 251.

'The sale or purchase should be (conducted) at that price which is fixed by the king; the surplus made therefrom is understood to be the legal profit of traders.'

Mitâksharâ: *By the king,* (Râjani) when he is near, whatever price is determined *i. e.* is regulated by him, by such a rate the sale and purchase must be made every day. That surplus which has been derived from it is *the surplus made* (Nissravaḥ) *i. e.* the special balance *i. e.* the surplus over the rate as regulated by the king is the only legal profit of the traders and not one made from rates determined by their own fancy. A special rule, has, moreover, been indicated by Manu[2] in the matter of regulating prices: "Once in (every) five nights, or at the close of each fortnight or month, "the king shall settle the prices in the presence of these (*i. e.* the traders)."

Yâjñavalkya Verse 252.

On commodities of one's own country, a trader shall take five per hundred, and ten on those from foreign countries, when he buys and sells again immediately.

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[1] 'The meaning which results thereform is, that a fine is directed for the offence of raising or lowering the market rates fixed by the king. The sage declares that purchase and sale should be conducted 'according to the prices regulated by the Sovereign' (Colebrooke)

[2] Ch. VIII, 402. . Some editions of Manu read पक्षे पक्षेऽथवा गते—

Mitâksharâ: Moreover, he who purchases a commodity obtained in his own country and sells it, such a one shall take a profit of five per cent *i. e.* five in one hundred paṇas. On a commodity, however, obtained from a foreign country, he should take as his profit, ten *paṇas* on an original cost of one hundred *paṇas*; (on) a commodity, the sale of which is brought about immediately on the day of purchase.

But he again, who sells at a subsequent time, for such a one, a greater profit shall be allowed as a longer time elapses. And thus, the market prices of commodities of his own country should be so regulated by the king that there may be a profit of five *paṇas* in a hundred *paṇas* on the regulated price.

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The Author mentions the principle for determining the price of a foreign commodity

Yâjñavalkya Verse 253.

Adding the incidental charges to the cost of the commodity, let a price be fixed which shall be equitable both to the buyer and the seller.

Mitâkharâ: On a commodity arriving from another country, after calculating the charges which are incurred in carrying it from and back to the foreign[1] country, as also the customs and other dues, and adding these to the original cost of the commodity, the price should be determined by the King[2] which will be equitable both to the buyer and the seller, so that a profit of ten per cent may be made.

CHAPTER XXI.

Non-delivery after Sale.

Having finished a topic which incidentally arose, the Author now introduces the chapter on Non-delivery after Sale. Its characteristics, moreover, have been stated by **Nârada**[3]: "When a commodity has

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[1] In this instance, another or a foreign country should not be assumed by a difference in language or the intervention of mountains or rivers, but by the actual distance by *Yojanas.*

[2] Cf. Manu Ch. VIII. 401. where a general rule has been laid down.

[3] Ch. VIII. 1.

"been sold for a price and is not delivered to the purchaser, it is termed "Non-delivery of a sold chattel—a Title of Law." There after mentioning the two-fold division of vendible things according as they are movable or immovable, its six-fold character has been demonstrated by the same Author[1] " In this world vendible property is of two kinds movable and "immovable (2). The rule regarding delivery and[2] non-delivery of mer-"chandise is declared six-fold by the learned *viz.* (What is sold) by tale, "by weight, by measure, according to work; according to its beauty, and "according to its splendour (3)." ' By tale ' as the betel-nut or the like. ' By weight ' such as gold, musk, saffron and the like. ' By measure ' such as rice or the like. ' According to work ' such as a horse, buffalo and the like as determined by the burden carried or the milk yielded by them. ' According to its beauty ' such as a prostitute &c. ' According to its splendour ' *i. e.* according to their lustre such as an emerald, a ruby or the like.

The Author mentions a fine for one who having sold a merchandise of (any of) these six kinds, does not deliver it

Yâjñavalkya Verse 254.

He who, having received the price of a thing sold, does not, however, deliver it to the buyer, shall be compelled to deliver it together with interest; or with the foreign profit, to one who has come from a foreign country.

Mitâksharâ : That merchandise of which the price has been received by the seller is one *the price of which was received* (**Grihîtamûlyam**); if a seller does not deliver such a thing on demand to a local purchaser, and if that merchandise bore a higher price at the time of the sale, but is obtainable at a low price at another time, then the seller shall be compelled to pay to the buyer the article together with the excess in value of the commodity—whether movable or immovable—over the one to which it is reduced. When there is no difference in the price of the commodity and its original price, but the commodity retains the same price at which it was agreed to be sold at the time of the (contract of) sale, the seller shall be compelled to make over to the buyer the merchandise itself together with the profit which a seller may have made *e. g.* two, three, or the like per hundred as already discussed, or otherwise according to the option of the seller. As says **Nârada**[1]: "If there has been a fall in the market value of "the article in question, the purchaser shall receive both the article itself "together with the difference in value. This law applies to those who are "inhabitants of the same place; but to those who travel abroad, the profit "arising from (trading in) foreign countries shall be made over (as well)."

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[1] Ch. VIII. 2-3.

[2] *Dána* is delivery and *Ádána* is non-delivery, Dr. Jolly translates it as gift and receipt, and so does Colebrooke III. 3. 3.

When, however, on account of a rise in the price of the commodity, there is a diminution in the thing, then the seller must be compelled to deliver over the thing itself together with the charges for enjoyment of the thing itself such as in the case of cloth, for wearing it, and in the case of a house, for comfortably dwelling in it, and the like. As says **Nârada**[2]: "If a man sells property for a certain price, and does not hand it over to "the purchaser, he shall have to pay its produce, if it is immovable, or the "profits arising from it, if it is movable property."

Possession by the seller is declared a decrease, as the thing loses in value from the point of view of the buyer. The decrease (here comprehended) is not any destructin of property such as the demolition of a wall, or the like; since that has already been mentioned in[3]: "If the article "should have been injured, or destroyed by fire, or carried off, the loss shall "be (charged) to the seller alone, as he did not deliver (it) after it had been "sold (by him)."

When, however, such a purchaser has come from a foreign country for taking away the merchandise, then, the seller must be compelled to

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deliver over the thing to the buyer together with such profit as might have been made by one taking the merchandise and selling it in a foreign country.

This rule, however, regarding the delivery of a thing purchased shall be observed in the absence of a rescission. When, however, there is a rescission, the rule must be followed as laid down by **Manu**[4] in: "If (anybody), after buying or selling anything &c."

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[1] Ch. VIII. 5.

[2] Ch. VIII. 4.

[3] Nârada Ch. VIII. 6.

[4] Ch. VIII. 222.

Yâjñavalkya Verse 255.

A Commodity, even if sold once may be sold again, if the first purchaser do not take it; and if there is loss on account of the fault of the puschaser, the same shall be his alone.

Mitâksharâ: Moreover, when, however, the purchaser, repenting of his purchase, does not desire to take delivery of the commodity sold, then the commodity even when sold (once) may be sold to any other. Also, when the purchaser does not accept (delivery of) a thing when (it was) offered by the seller, and if the commodity is destroyed by act of God or of the king, then the loss will be of the purchaser alone; since the loss happens through the fault of the purchaser in refusing to accept the commodity.

Yâjñavalkya Verse 256.

Should a commodity be injured by act of God or of the king, the loss shall be of the seller alone, if he did not deliver it on demand.

Mitâksharâ; Moreover, when, however, the seller does not deliver a thing even upon request by the buyer, even when he has not rescinded (the sale), and it is injured by an act of God or of the king, then such a loss is of the seller alone. Therefore, another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer.

Yâjñavalkya Verse 257.

If a man sell a commodity to one, when it had already been sold to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing.

Mitâksharâ: Again, he who sells or delivers a thing to one when it had already been sold to another, and even without rescinding (the first sale), or sells a commodity which has a flaw, by patching up the flaw, then a fine double in amount of the price of the commodity must be understood. **Nârada**[1] also has stated a special rule in such a case : " When a man "sells something to one person, and delivers it to another person, he shall "be compelled to pay double the amount, and also a fine of an equal "amount (8). When a man exhibits a thing which is faultless, but sells one "having a flaw, such a one shall be compelled to pay twice its value, and "also an equal amount as fine (7)."

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[1] Ch. VIII. 8-7.

The whole of this law is to be observed in the case of a commodity, for which a price has been paid. In the case of a commodity, however, for which no price has been paid, there is no liability for entering (into a new transaction) or receding (from one already entered into), excepting such special agreement as may have been entered into under the terms of the merely verbal negotiations between the seller and the buyer. As says Nârada[1]: "Thus has the law been declared with regard to a merchandise "for which the price has been tendered; when the price has not been "tendered, there is no rescission[2] to be imputed to the vendor, except in "the case of a special agreement."

Rescission of a sale has (thus) been described; the characteristics of a rescission of a purchase, have already been discussed before. Now the Author mentions a rule which is common to both of these

Yâjñavalkya Verse 258.

No rescission of a sale of commodities shall be made by a trader unless he was[3] ignorant of the excessive or diminished rates (therefor). He who does (rescind) shall be liable to pay a fine of a sixth part.

Mitâksharâ: No rescission (of a purchase) shall be made by a purchaser, who does not perceive any excess in the price charged, or the commodity, upon a valuation of the same subsequent to the time of the purchase, but at the rates prevailing at the time of the purchase; nor shall the contract be rescinded by the seller who does *not* perceive any loss in the commodity consequent upon its excessive value (in the market).

The time for rescission has, however, been mentioned by **Nârada**[4] "When a purchaser, after having purchased an article for a (certain) price, "considers that he has made a bad bargain he may return it to the vendor "on the same day, in an undamaged condition (2). When the purchaser "returns it on the second day, the seller shall deduct a thirtieth part of

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[1] Ch. VIII. 10.

[2] Dr. Jolly's edition reads अतिक्रम. This appears to be a better reading. But all the editions of the Mitâksharâ read अविक्रय:

[3] It seems Mr. Colebrookes's reads this verse in Yâjñavalkya differently. His reading would appear to be पण्यानामभिजानता since he translates as "who well knows the profit and loss &c." See Colebrooke Dig. I. p 68.

[4] Ch. IX. 2-3. C/o also Yâjñ: II. 177. p. 317 above.

"the price; twice as much on the third day; after that time, the thing "belongs to the purchaser alone."

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In the case, moreover, of a sale or purchase made without an examination (of the commodity), the time for rescinding the contract on account of a defect in the commodity has already been indicated in the text[1]: "Ten, one, five seven days &c." Therefore from this text it may be inferred that a knowledge of the increase or decrease in the value may serve as a reason for a rescission. Moreover, from the interval for testing a commodity purchased may be inferred the reason for a rescission on the ground of defects in the commodity. Therefore, whoever makes a rescission in the absence of the three reasons—*viz*, a defect in the commodity, or an increase or decrease in its value—even within the time allowed for rescinding, then he shall be fined a sixth part of the (value of the) commodity. The same fine shall be inflicted on one who makes a rescission after the lapse of the interval allowed for a rescission, even though there be (good) reason for a rescission[2].

In the case of things which do not suffer by enjoyment, and which have a fixed value, the fine for one making a rescission after the time for rescission is over, shall be imposed in accordance with the rule laid down by Manu[3]: "But after (the lapse of) ten days he may neither give it, nor "cause it to be given (back). Both he who takes it (back) as well as he "who gives it (back) shall be fined by the king six hundred (*paṇas*)."

Thus ends the chapter called 'Non-delivery after sale.'

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[1] Of Yâjñavalkya II. 177 see p. 317 above. Bâlambhaṭṭa atributes it to Manu-apparently a mistake.

[2] So according to Vijñânes'vara there are only three main reasons for rescinding a contract of sale or purchase *viz.* (1) A defect in the commodity, or (2) advantage or (3) loss accuring on account of the ignorance of actual rates prevailing in the maket at the time of the sale. These are the only reasons. And secondly, the rescission on account of these reasons must be made within the time prescribed. So that a rescission shall not be allowed if made after the lapse of the interval prescribed for a particular case.

[3] Ch. VIII. 223.

CHAPTER XXII.

Trading by Partnership.

Now is being described the Title of Law called 'Trading in Partnership.'

Yájñavalkya Verse 259.

Among traders carrying on a business in partnership with a view to gain, the profit and loss shall be according to the (contribution of each to the) stock, or according as was determined by special agreement.

Mitâksharâ :—*Partnership* (**Samavâyaḥ**) is an agreement by which several persons agree to do any business together. Under such an agreement, for such work as is done by each of the people, such as traders, actors, dancers and like others working with a view to gain, the share of *profit or loss* (**Lâbhâlâbhau**) *i. e.* of an increase or decrease, will be determined by regard to the contribution of each *i.e.* according to the quantity of stock supplied by each. Or, the shares (in the profit and loss) shall be determined as fixed upon by any agreement or compact (between the parties), such as, having regard to the chief qualities and capacity in each, such a one should be entitled to two shares, such another one share, and the like.

Yâjñavalkya Verse 260.

Whatever is forbidden or not sanctioned, as also what has been injured through negligence, such property he shall make good; but he shall be entitled to a tenth part of the property preserved from misfortune.

Mitâksharâ : Again, among those trading as partners, if on account of the action of some one against a prohibition 'that a certain commodity is not to be dealt with in a particular manner,' any property is injured, similarly by doing something not sanctioned *i. e.* not allowed, as also if any thing is injured through negligence *i.e.* on account of want of prudence such a one shall make good that commodity to the traders.

He, moreover, from among them who preserves any merchandise from any misfortune proceeding from either the king or the like, such a one obtains a tenth portion of the merchandise thus protected.

Yâjñavalkya Verse 261.

The king shall take as a tax a twentieth share of the price fixed (by him). A Commodity which has been specially reserved as also that which is worthy of a king shall, if sold, belong to the king.

Mitâksharâ: For fixing the price of a commodity *e. g.* such an article of merchandise shall have such a price *i. e.* by reason of the same being determined upon by the king, he (*i.e.* the king) shall receive a twentieth part of the price as a tax. That moreover which had been specially reserved *i. e.* prohibited by the king from being sold anywhere else, also that which is worthy of the king, such as jewels, rubies and the like, even when forfidden, if the same be sold out of greed for profit without informing the king, the same *shall belong to the king* (**tadrâjagâmi**) *i. e.*, all that merchandise the king shall appropriate without (regard to) the payment of price.

Yâjñavalkya Verse 262.

He who falsely declares the quantity, who avoids a tolling office, shall be compelled to pay eight times, as also he who purchases or sells fraudulently.

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Mitâksharâ: That trader, again, who conceals the (real) quantity of a commodity with the object of defrauding the customs (officers), or skulks away from the tolling offices; as also he who either purchases or sells an article which is the subject of a dispute (as to) 'whether it belongs to this or that man', all these shall be fined eight times the amount of the value of the commodity.

Yâjñavalkya Verse 263.

A marine officer levying a land cess, shall be compelled to pay ten *paṇas*. The same shall be (the fine) for not inviting the Brâhmaṇas and *Prâtiveśyas*.

Mitâksharâ: Again, customs dues are two-fod, *viz.* one levied on land, and another levied on water. Of these, the tax levied on land has been mentioned in the text[1] "The king shall take as a tax the twentieth share of the price fixed." The tax levied on water, however, has been mentioned in the text of **Mauu**[1]: "At a ferry, a conveyance shall be made "to pay one *paṇa*, a man half a *paṇa*, an animal and a woman a quarter, "and an unloaded man one-half of a quarter (404). Conveyances fully laden "with vessels shall be made to pay toll at a ferry according to the substance[2]; empty vessels, as also men without a luggage (shall pay) a trifle "(405). But a woman who has been pregnant two months or more, an ascetic, a monk, and Bráhmaṇas, as also students of the Vedas, shall not be "made to pay toll at a ferry (407)."

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[1] Yâjñavalkya II. 261 p. above.

Here is another special rule[3] applicable even to both kinds of tolls: "A toll is never levied on a sum less than a *kârshâpaṇa*, it ts never leviable on livelihood gained by art, nor on an infant, nor on a messenger, nor "on what has been received as alms, nor on the remains of stolen property, "nor on a *S'rotriya*, nor on a hermit, nor on a sacrifice."

That, by which a thing is floated is a ferry *e. g.* a boat and the like. One who is commissioned to recover the toll levied on these is a *Marine Officer* (**Tarikaḥ**). Such a one, when he recovers a toll levied on land shall be fined ten *paṇas*. *Ves'a*, *Ves'ma* and *Prates'a* are indicative of one's own house and the (neighbours in its) front or rear. People living in these parts are *prâtives'yas* or people living in the neighbourhood. *Brâhmaṇas* and *Prâtives'yâs* (joined together) make up (the compound expression) 'Bráhmaṇs and prátives'yas.' The non-invitation of these on exequial occasions or the like, when they are accomplished by the study of the Vedas and by their (pure) lives, and when he has competence (to invite them)—this itself must be understood to be punishable with ten *paṇas*.

The Author mentoins a rule regarding the property of a trader dying abroad

Yâjñavalkya Verse 264.

If[4] one goes abroad and dies (there), his wealth shall be taken by his *dâyâdas*, *bândhavas* or his *jñâtis*, or who may have come; and failing these, by the king.

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[1] Ch. VIII. 404, 405 and 407.

[2] *i. e.* according to the quantity of the goods as well as their value.

[3] See Vasistha Ch. XIX. 37. Bâlambbatta assigns it to Manu.

[4] The whole of this passage has been translated and referred to by Messrs. West and Buhler in their Hindu Law at p. 135 sqq: and in *Sakrabhai* vs. *Maanglal* 26 Bom. 206 (F. B.) at pp. 218–219.

Mitâksharâ: When one of those who trade in partnership goes abroad and dies, then his share, his **dâyâdâḥ** *i. e.* his sons and other lineal descendants; **bândhavâḥ** *i. e.* (relations) *ex parte materna*, such as the maternal uncle and others; his **jñâtayaḥ** *i. e.* his Sapiṇḍa relations other than his lineal descendants; or *who may have come* (**Âgatâḥ**) *i. e.* such of the members of the joint trading partnership as may have returned from the country abroad; (these) shall take. *Failing these* (**Tairvinâ**) *i. e.* in the absence of these the *dâyâdâs* and others, the king shall take.

By the use of the word *wâ* 'or', the Author indicates the uncertain[1] nature of the right of *dâyâdâs* and others to succeed. The rule as to the order of succession, however, must be understood here to be the same as that propounded in the text[2]: "The wife, the daughter &c." Among merchants also, he who is competent to offer the funeral oblation and pay the debts and do similar acts shall take. If there is no distinction as to the capacity (for doing the above), all the merchants trading together in union shall take after dividing. In the absence of these also, after waiting for the appearance of the *dâyâdâs* and others for ten years, and on their nonappearance, the king may take it himself. All this has been made clear by **Nârada**[3]: "Should one of the partners die, his *dâyâdâs* shall "get his share (7). In the absence of the *dâyâdâs*, any one (of the part-"ners), if all are equally competent. On failure of these, he shall keep it "well guarded for ten years (17). When such property without an owner, "and unclaimed by a *dâyâda*, has been preserved for ten years, the king "may then take it over to himself. Thus the law will not be violated."

Yâjñavalkya Verse 265 (1).

A man of crooked ways let the other partners expel without profit; one unable (himself) may have it done by another.

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Mitâksharâ: moreover, *a man of crooked ways* (**Jimhaḥ**) *i. e.* a cheat, such a one, the other partners should deprive of all profit and expel *i. e.* drive. He moreover, among partners carrying on a joint trading business who is unable to supervise the vessels of merchandise and do other like acts, such a one may cause his own duty, such as that of conveying the goods of trade, or supervise the accounts of the receipts and debits relating thereto and like other acts, by another.

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[1] वैकल्पिक *Vaikalpika*—optional—Contingent.

[2] Yâjñavalkya II. 135 & 136. See pp. 227–228 above.

[3] Ch. III. 7. 17–18.

The Author extends the law (relating to partnership) among traders as stated before, to Priests officiating at a sacrifice and the like others

Yâjñavalkya Verse 265 (2).

By this has (also) been stated the law regarding officiating priests at sacrifices, husbandmen and artisans.

Special rule regarding the distribution of the property of sacrificial priests.

Mitâksharâ: *By this* (anena), *i. e.* by the statement of the rule[1] regarding traders *viz.* "the profit and loss shall be according to the stock &c."; the law, regarding *officiating priests at sacrifices* (ṛitwijâm) such as the *Hotar* and others; the husbandmen, as also the actors, dancers and others maintaining themselves on arts, *the law* **(Vidhiḥ)** *i. e.* the rule of conduct, *has been stated* **(A'khyâtaḥ)**.

Even there, a special rule has been stated by **Manu**[2] regarding the distribution of the property of priests: "Among all (the priests) officiat-"ing at[3] a sacrifice, those (first four who are) entitled to a half (*Ardhinaḥ*)

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[1] Yâjñavalkya II. 259 see p. 377 above.

[2] Ch. VIII. 210.

[3] The principal priests officiating at a sacrifice who are called *Ṛitwiks* are sixteen in number distributed under four classes, each class having four members.

(1) The first class includes those who are entitled to a *half* of the entire *Dakshiṇâ*, and are known as the *Ardhinaḥ*.

(2) The members of the second class are entitled to a half of the first, and hence are known as *Tadardhinaḥ*.

(3) The third class are entitled to a third of the first class, and are called *Tṛitiyinaḥ*.

(4) The Fourth class are entitled to a quarter of the First class, and are known as *Pàdinaḥ*.

Although one hundred cows are considered as a proper *Dakshiṇâ* for a sacrifice, still to make the whole distribution commensurate, 96 is the number chosen (see Amara I. 3. 16) so that the Frst Class take 48 cows, the second class, 24, the third, 16, and the Fourth, 12, thus making up the total of 100 cows. This is one way of distribution and has been expounded in the text of the Mitâksharâ. Another way of distribution is suggested by some *e. g.* by Nàrada, according to which the whole is divided into 25 shares and the several classes shall receive 12, 6, 4 and 3 shares each respectively, a mode which, it will be seen, only differs in the method of working out the figures, but yields the same result, "are the first (to receive); the next (four), one half of that; the set entitled to a third share, one-third; and those entitled to a fourth, a quarter." The meaning of this passage is this: under the text "in a Jyotishtoma[1] sacrifice, they shall endow it with a hundred", a hundred cows have been enjoined as an endowment for the sacrifice as indicative of respect to the *Ritwiks* or priests officiating at the sacrifices. The *Ritwijâs* moreover are the *Hotâ* and others sixteen in number. There, in answer to the question, what person is entitled to what share? the rule in the present text is laid down. Of all the sixteen priests officiating at a sacrifice those who are the chief *viz.* the *Hotâ*, *Adhwaryuḥ*, *Brahmâ* and *Udgâtâ*, these are entitled to a half of the hundred cows *i. e.* equal to forty-eight cows, to make the division complete into entire numbers[2]. Those next in order *i. e.* the *Maitrâvaruṇaḥ*, *Pratiprasthâtâ*, *Brâhmaṇâchchamsi*, and *Prastotâ* are entitled to a half of that *i. e.* half of the principal share *i. e.* twenty-four (cows). Those, moreover, who are entitled to a third *viz*: the *Achchâvâk*, *Neshtâ*, *Agnidhra* and *Pratihartâ*, these being entitled to third *i. e.* a third of the principal share, shall take a third *i. e.* sixteen cows. Those, indeed, who are entitled to a quarter *viz*: the *Grâvastuḍ*, *Unnetâ*, *Potâ*, and *Subrahmaṇyaḥ*, these shall take what amounts to a fourth part of the principal share *i. e.* twelve cows.

An objection.

Indeed how can this rule as to shares prevail? There is here neither a compact (to that effect), nor a conbination of capital, nor any express text, under which there may be a rule as to shares. And under the maxim of law *viz.* "In the absence of a special rule, the share shall be equal," it is proper that all shall be entitled to equal shares, or proportionately to their labour.

The Answer.

Here, the answer is: In the *Dvâdaśâha*[3] sacrifice, which is only a variant of the principal sacrifice called *Jyotishtoma*, it is not proper to suppose that (the recognition of) the *Ardhinas*, *Tṛitiyinas* and *Pâdinas* is a mere repetition of something already established, if in the principal sacrifice, the *Maitravaruṇa*, and the other priests were not entitled to a half, a third and the fourth shares respectively. Therefore the rule as to (particular) shares as mentioned before (necessarily) follows from the very force of the[1] expressions *Ardhis* &c. used in the Veda. Thus there is no fault.

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[1] *Jyotishtoma* is a Soma sacrifice and is considered as the type of a whole class of sacrificial ceremonies. At this sacrifice sixteen officiating priests are required by law, and these are grouped into four classes, each class having again four priests in it as described in note 3 on p. 381, and in the text of the Mitâksharâ.

[2] See note above. The relative proportion of the shares of the several classes as mentioned in the text will not be maintained if 100 be taken as the total number in relation to which the half &c. is to be determined. Moreover according to the laxicon *Amara* (I. 3. 16) the word *ardha* 'half' when in the masculine gender, is used generally to indicate 'a portion', and not precisely a half. Thus 48 is chosen as the figure for the first class, and then the numbers 24, 16 and 12 respectively are deduced by the method described above.

[3] *Dwâdas'âha*—is an offshort of the principal sacrifice called *Jyotishtoma*, which is called the *Prakṛiti*, *i. e.* the basic sacrifice, as opposed to a *Vikṛiti*, which means a variant of the base, with slight variations as to details.

Thus ends the Chapter in the Law of Partnership.

CHAPTER XXIII.

On Theft.

Definition of Theft.

Now commences the chapter on Theft. Its definition has been stated by **Manu**[2]: "An offence, which is committed in the presence, and with "violence, would be called *Sâhasa* (*i. e.* robbery); if "(it is committed) in the absence, it would be (called) "theft (*Steya*); as also where anything is denied after it has been "committed[3]." *In the presence i. e.* in the presence of the owner guarding the property, or the king, or the chief officer, or like other. *With violence i. e.* with a show of criminal force, when a deprivation of another's property or any such similar act is committed, it becomes a *Sâhasa* or robbery. Theft, moreover, is two-fold. 'In the absence' *i. e.* where, in the absence of the owner of the property or like another, another's property is taken away by deception, it is called theft. Where moreover, even when the act is committed in the presence, (the actor) denies (it) through fear (saying) 'I did not do this', even that is theft. It has also been said by **Narada**[1]:

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[1] *Samâkhyâ*—'name, expression,' one of the six means of proof of the Viniyoga-vidhi, the other five being *S'ruti*, *Linga*, *Vâkya*, *Prakaraṇa* and *Sthâna* (See General Note on the Hindu Law Texts p. IV.)

The meaning is this: The objector maintains in the statement of his objection, that the persons to whom the terms *viz. Ardhinas*, *Tṛitiyinas* &c. are applied, are not necessarily entitled to a half, a third, or a fourth respectively, in every other sacrifice also, simply because of the fact that they get those shares in the principal sacrifice of *Jyotishtoma*. This would be justifiable if it were a mere repetition of what had already been established. But no such rule has been established after a proper demonstration, and therefore there is no room for its adoption as a mere repetition (*Anuwâda*). The answer however is that it is not as a repetitton (*Anuwâda*) of anything established (*Siddha*) that this rule as to shares is being propounded, but that the very force of the expressions *viz. Ardhins*, &c. used in the Veda carries with it the meaning that the several priests thus indicated are entitled to a half, a third, and a fourth share respectively.

N. B. An *Anuwâda* (अनुवाद्) is an explanatory repetition of, or reference to, what is already mentioned.

[2] Ch. VIII. 332.

[3] हृत्वा is another reading, which is seen in Manu and elsewhere. In that case it would mean, "after it has been taken away."

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"Taking away by any of these several means whatsoever, by deception, the "property of persons asleep, or disordered in intellect, or intoxicated, Sages "declare to be theft."

There, as the catching of a thief is necessary for punishing him, and as for catching him it is necessary to detect him, the Author presently mentions the means of detecting him

Yâjñavalkya Verse 266.

'A thief' is arrested by the police-officers, by means of the lost article, or by the foot-mark, a man once convicted of an offence, as also one who lives in an unknown place.

Mitâksharâ: One, who is declared by the people "This is a *thief*" (**chauro**)—such a one should be arrested by the *police-officers* (**Grâhakaiḥ**) *i. e.* the state officers, such as the watchman of the place and the like others; or he may be apprehended by means of the *lost article* (**Loptra**) *i. e.* the vessel &c. which had been taken away, as (it is) an index of theft, or by tracing the foot-marks immediately from the day of the loss. He, moreover, who had *once been convited of an offence* (**Pûrva-Karmâparâdhî**) *i. e.* who had once been found out to have committed a theft, as also one *who lives in an unknown place* (**As'uddhawâsakaḥ**) *i. e.* one whose place of residence is unknown *i. e.* not well-known, such a one also may be arrested.

Yâjñavalkya Verses 267-268.

Others also may be apprehended on suspicion, such as those who conceal their caste, name, and the like; those who are addicted to gambling, women, and drinking, as also those whose mouth becomes parched up, and voice falters (267);

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[1] Ch. XIV. 17.

Also those who make inquiries about another's wealth and houses, whose movements are mysterious, who having no income, spend much, and those who sell lost articles (268).

Mitâksharâ: Moreover, not only that those mentioned before should alone be arrested, but *others also* (Anyepi) by means of marks to be presently mentioned *may be apprehended on suspicion* (S'ankayâ grâhyâḥ).

'On account of the concealment of the caste' *e. g.* in the form 'I am not a S'udrâ, On account of the concealment of the name. *e. g.* one saying 'I am not Lapittha.' And by the use of the term *Âdi*—'and the like', those also should be apprehended, who are exposed by the concealment of their own country, village, family and the like.

Those who are excessively addicted to gambling, public women, drinking and other similar vices, as also one who when accosted by the police officers "whence have you come ?" *has his mouth parched up* (S'ushkamukhaḥ) or *his voice falters* (bhinnaswaro), then he also may be apprehended. By the use of the plural number are included also those whose forehead[1] perspires and the like others.

Likewise, those who without any cause make inquiries, 'how much wealth has he ?', or 'where is his house ?', or those who move about concealing their identity by putting on a disguise; those also who having no income, spend much, as also those who are vendors of lost articles *i. e.* of the old clothes, broken pots and similar other articles the owners where of are not known, all these may be apprehended on suspicion as thieves.

Having thus apprehended people having various marks of suspicion about their having committed a theft, a decision as to the real thief should be declared after a minute inquiry, and not by a mere discovery of the signs (of a thief), as it is possible that the marks of (having) the lost article and others may be found even on one who is not a thief, as says Nârada[2]: "An article should be determined upon as a lost one by special "investigation, *i.e.* when it had dropped down from another's hand, and was "discovered in the ground, without any special desire for it, whether it was "deposited there by a thief." Also, "The untruthful appear as the truth-"ful, likewise the truthful look as if they were untruthful; thus various

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[1] See Yâjñ. II. 13-15 p. 27 above.

[2] Not found in the published edition of Nârada by Dr. Jolly.

"aspects (of things) are seen (in this world); therefore an investigation "has been prescribed."

The person thus apprehended on a suspicion of theft, must prove himself innocent; so the Author says

Yâjñavalkya Verse 269.

If one who has been apprehended on suspicion do dot clear himself from the (charge of) theft, the king shall compel him to make good the lost article, and punish him with the penalty for a thief.

Mitâksharâ: If one apprehended on suspicion as a thief does not clear himself from that charge, then he shall be compelled to pay the amount and be liable to corporal punishment as will be presently mentioned. Therefore, he should be cleared either by human[1] proof; or in its absence, by an ordeal.

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An objection.

The answer.

Indeed, how can the statement *e. g.* "I am no thief" be possible as evidence in an answer[2] of denial. Because it is negative in its nature. The answer is: the admissibility of an affirmative as well as a negative proof in an ordeal has been demonstrated in the text[3], "Or by consent any one (of the two) may perform." Moreover[4], although human proof is not possible in an answer of a simple denial, still when it is joined to a special plea, which is of an affirmative character, and then becomes 'a combination of a denial and an exception', it makes it possible even for the negative evidence to be adduced. *e. g.* if the accused prove by evidence his statement *e. g.* "At the time of the loss or theft I was in another place", the absence of theft (by him) becomes necessarily proved, and thus indeed there follows an exhoneration.

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[1] See p. 38 ll. 12–16.

[2] See Text p. 7 Translation p. 14 ll. 3–5 above.

[3] Of Yâjñavalkya II. 96 (1); See pp. 130–135 above.

[4] See pages 16 and 17 above. The meaning is that a statement in a defence which is merely of a negative character cannot be established by proof positive—*e. g.* when a man says 'I have not committed this theft'—unless he can establish some positive fact which will collaterally support his negative answer, *e. g.* by his setting up an *alibi*, when he can affirmatively prove that he was at the time when the theft was committed in another place. And for this he will have to file a mixed plea 'combined of a denial and a special plea.'

The Author mentions the penalty for a thief

Yâjñavalkya Verse 270 (1).

Having compelled the thief to restore the property stolen, (the king) should punish him by the several (modes of) corporal punishments.

Mitâksharâ: He, however, who either by means of the texts laid down before, or by means other than those, has been proved to have committed a theft, after having compelled him to make over to the owner the property *stolen* (**aparhitam**), either the thing itself or by its equivalent (in money), (the king) *should punish him by the several* (modes of) *corporal punishments* (**wiwidhairwadhâirghâhayet**).

This, however, has a refrence to articles of a superior quality, in the case of which the punishment of the highest amercement is incurred, and does not hold in the case of the theft of articles of small or middling value such as flowers, clothes &c. Since, on account of the text of **Nârada**[1]: viz. "That series of punishments, which has been ordained by the wise for the "three kinds of Sáhasa, is equally applicable to theft, according as it "concerns one of the three species of articles in their order." The corporal punishment, which is ordained for a Sáhasa of the highest order, has been assigned in the case of articles of superior value. What, moreover, has been observed by **Vriddha Manu** in the text: "The property of these is "tainted with sin since it has been acquired by illegal means; therefore "the king should inflict corporal punishments on them, and should not "merely inflict a pecuniary fine," that too has a reference to offences of a serious nature.

The Author mentions an exception in the case of certain thieves

Yâjñavalkya Verse 270 (2).

He should brand a Brâhmaṇa, and banish him from his kingdom.

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[1] Ch. XIV. 21.

Mitâksharâ: Moreover, he should not inflict a corporal punishment on a Brâhmaṇa (who has been found as a) thief; but, after branding him on the forehead, he should banish him from his kingdom. The branding, too, should be with the mark of a dog's foot. For **Manu**[1] says: "For violating the bed of the preceptor (the mark of) a female part shall "be impressed; for drinking spirituous liquor, the sign of a tavern; in the "case of a theft, moreover, the mark of a dogs's foot should be made; for "killing a Brâhmaṇa, a headless corpse."

This proceeding, moreover, should be observed, in the case of one who does not perform the (necessary) expiation after the punishment (was declared) as says **Manu**[2]: "But (men of) all castes who perform the "penances as prescribed, must not be branded by the king on the forehead, "but shall be made to pay the highest amercement."

The Author mentions the means of getting at the stolen property after the thief has been discovered

Yâjñavalkya Verse 271.

In the case of a murder or a theft, the blame attaches to the village-officer, when the offender has not (been traced to have) gone out; to the owner of a pasture ground; to the detectives of thieves, when (the offence is committed) on the high-way or in a non-pasture ground.

Mitâksharâ: If the killing of man or of any other living animal, or a deprivation of property takes place in a village, then the blame for neglecting a thief would be that of the headman of the village alone; and to atone for it, he himself must catch the thief and hand (him) over to the king. When he is unable to do that, he should pay the stolen amount to the owner, if he does not point out the foot-marks of the thief to have emerged from out of the village and beyond it. When, moreover, such marks are pointed out, wherever the same (appear to) enter, the owner of such property alone should make over the stolen amount. Likewise **Nârada**[3] also says: "He, within whose pasture ground a robbery "has been committed, must trace the thief to the best of his power, or else "he must make good what has been stolen, when the foot-marks cannot be

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[1] Ch. IX. 237.

[2] Ch. IX. 240.

[3] Appendix, 16 and 17.

"traced beyond (into another man's ground) (16). When the foot-marks, "after leaving that ground, are lost and cannot be traced any further, the "neighbours, the watchmen on the road, and governors of that region shall "be made responsible for the loss (17)."

When, however, the theft takes place in a pasture-ground, the responsibility rests with the owner of the pasture alone. When, however, the deprivation takes place on the road itself, or in a *non-pasture ground* (Awîtake) *i. e.* in a place other than a pasture-ground, then the blame lies with the detective of thieves, or the watchman of the road, or the governor of that region.

Yâjñavalkya Verse 272.

A village, however, should pay (when) within its own limits, or that where the foot (mark) has reached. When beyond a *krośa*, five of the surrounding villages, or even ten villages also.

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Mitâksharâ: Moreover, when however, a theft &c, occurs outside a village, but in a field which is on the outskirts of its boundary limits, then the inhabitants of that village alone should pay, if the foot-mark of the thief has not emerged out beyond the boundary limit. When, however it has emerged out, that village whereinto the foot-marks of the thief enter, shall alone make over the thief and do other acts.

When, however, any one is killed or robbed midway between several towns, and in a place which is more than a *krośa*[1] outside (each of them), and the foot-marks of the thief have also been lost on account of the pressure of the crowd, then in such a case five villages *i. e* the five villages together, or ten villages *i. e* the ten villages together, should pay. The optional clause is used to indicate that as much should be done as would bring about a restoration of the property stolen &c, from the villages contiguous to the place.

When, however, the king is not able to cause property stolen elsewhere to be restored, then he should indeed pay from his own treasury. *Vide* the text of **Gautama**[2]. "Having recovered property stolen by thieves, he

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[1] *i. e.* two English miles.

[2] Ch. X. 46–47.

"shall return it to the owner, or he shall[1] pay out of his own treasury."

In case of a doubt as to whether a property was stolen property or not, the decision should be made by means of human proof or by ordeal, as has been laid down by **Vṛiddha-Manu**: "If, while the property is being "caused to be restored, a doubt arises as to a theft (having taken place), "the person robbed should be administered an oath, or he may establish his "case by (the evidence of) his relatives."

The Author mentions a special penalty in cases of particular offences

Yâjñavalkya Verse 273.

The King shall cause to be impaled on a stake *Bandigrâhas*, likewise the stealers of horses and elephants, as also those who commit murders with violence.

Mitâksharâ: The king should cause to be impaled on a stake the Bandigrâhas[2] and like others, as also men who commit murders accompanied by violence and force. This, moreover, is a rule regarding only one kind of corporal punishment. *Vide* the text of **Manu**[3]: "Those who "break into a (royal) storehouse, an armoury, or a temple, and those who "steal eleplants, horses, or chariots, he shall indeed slay without hesitation."

Yâjñavalkya Verse 274.

The pick-pockets and cut-purses should be deprived of the tongs of their hands; for a second offence, they should be deprived of a hand or a foot.

Mitâksharâ. Moreover, he who throws up the clothes or other things *i. e.* carries them away is a *pick-pocket* (**Utkshepakaḥ**). He who carries away gold or other things tied in a cloth &c. either by loosening or cutting (the knot) is a *cut-purse* (**granthi-bhedakaḥ**). These two respectively should have the forefinger and the thumb resembling a tongs removed from their hands.

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[1] *i. e.* when the thieves are not traced, or having been traced have vanished, then the king should pay from his own treasury. Haradatta.

[2] *Bandigrâhas* are those persons who forcibly take or carry away others as prisoners.

[3] Ch. IX. 280.

On a second offence, moreover—a hand and a foot (joined together make up the compound expression) 'a hand and a foot.' That and each one of these, is 'a hand and a foot.' Those two should each have 'a hand or a foot' taken away from them. *i. e.* of the pick-pocket and the cut-purse a hand and a foot should be cut off from each. This is the meaning.

This also has a reference to articles which bring on the highest Sáhasa, since **Nârada**[1] has observed. "The amputation of that limb (with "which the crime had been committed) is declared to be the punishment for "Sâhasa of the highest degree." For a third offence, however, death alone (is the punishment). So **Manu**[2] (says): "On the first conviction he should "cause two fingers of a cut-purse to be cut off; on the second, a hand and "a foot; on the third, he deserves death."

The meaning is, the punishment should be determined upon by regard to the caste and the amount of property, as also the value &c.

As it is impossible to lay down several punishments in regard to each kind of property, having regard to the fact that the causes for a heavy or light punishment are innumerable *viz*: the caste, the amount of the property, the relation, or the appropriation (of the same) as also the age, capacity, the qualities, the country, the time:and such other causes; the Author mentions a general rule for determining a punishment

Yâjñavalkya Verse 275.

In the case of the theft of inferior, middling and superior articles, the fine shall be according to the value. In passing sentence, the place, the time, the age and the capacity should be taken into consideration.

Mitâksharâ: In the case of a *theft* (haraṇe) of articles of inferior, middling, as also of superior quality, the punishment should be determined *according to the value* (Sârato) *i. e.* the price (of the article &c). The nature of an article of an inferior or other quality has been mentioned by **Nârada**[3]: "Earthenwere, a seat, a couch, bone, wood, leather, grass, "and the like, leguminous[4] grain and prepared food, these are instances of "articles of small value (14). Clothes other than those made of silk, and

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[1] Ch. XIV. 8 See p. 361 ll. 30-33 above.

[2] Ch. IX. 277.

[3] Ch. XIV. 14-16.

[4] *S'amidhânya*—is any pulse or grain growing in pods; a leguminous grain.

"likewise cattle other than cows, and metals other than gold are articles "of middling value, as also are rice and barley (15). Gold, jewels, a silken

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"cloth, a woman, a man, a cow, an elephant, and a horse, and the property "belonging to a god, a Bráhmaṇa, or a king, must be understood as articles "of superior value (16)."

The same **Author**[1] has pointed out a rule of punishment in terms of a *Sâhasa* of the inferior, middling or superior quality in the case of articles of three classes, derived from the general rule : " That series of punishments which has been ordained by the wise for the three kinds of Sáhasa, "is equally applicable even to theft, regarding articles of the three classes "respectively." In the case of a jewel or a pot which is made of earth, or of cattle other than cows and horses such as a buffalo, a ram, and the like, and also gold, grain &c, belonging to a Bráhmaṇa, there is a rule of differentiation as to higher or lower quality; and thus when it is desired to determine upon a higher or a lower form of punishment, it should be done by regard to the price &c.

In *passing sentence* (**daṇḍakarmaṇi**), for fixing upon a particular punishment, the country, the time, and the age (of the offender) &c, should be carefully taken into consideration, as the determining causes thereof. These moreover also imply the (consideration as to) the caste, the size of the (particular) article, and (the extent of) the appropriation, or like other matters. Moreover[2], : " The guilt of a *S'ûdra* in the sase of a theft "is eight-fold; and twice that and higher still will be the punishment in "each higher caste, and in cases of offences by the learned the punishment "shall be very much increased." The meaning is this: By the word 'guilt' (used) here, the punishment is intended. Whatever punishment has been prescribed for a particular theft; the same should be administerd eight-fold in the case of a theft by a learned S'ûdra. In the case of learned men of other castes, moreover, *e. g.* of the Vais'ya, Kshatriya or Bráhmaṇa castes, the guilt is two-fold and higher up *i. e.* sixteen, thirty-two, and sixty-four[3] times the amount; since there is a higher punishment for a theft committed by a learned *S'ûdra*. The same meaning has been brought out also by **Manu**[1]; "In (a case of) theft the guilt of a "*S'ûdra* is eight-fold, sixteen times that of a *Vaiśya*, and thirty-two times "in the case of a Kshatriya (337). That of a Bráhmaṇa sixty-four fold; or quite "fully a hundred, or (even) twice four-and-sixty fold; (each of them) know-"ing the nature of the offence(338)." Similarly, a higher punishment is also determined by the consequences (of the offence). As says **Manu**[2]: "Of him who steals more than ten *kumbhas* of grain, corporal punishment (shall be inflicted); in other cases he shall be fined eleven times as much; and shall be made to pay the property[3] (to the owner)." A *kumbha* is equal to twenty *Droṇas*. The punishments of beating, deprivation of a limb, or death, to be declared against the thief should be determined upon by regard to the qualities of the owner robbed, as also to the time being plentiful of harvests, or of famine. Moreover, in the case of precious jewels and like articles, there is a particular punishment even by regard to the particular number (stolen): "A[4] corporal punishment shall be inflicted in the case "of a theft of more than a hundred, of articles made of gold, silver (or other "like metal), and of most excellent clothes; as also of (a theft) of all kinds "of jewels. For (stealing) more than fifty, the (punishment of) cutting off "of the hands is intended; in other cases, a fine eleven times the price (of "the article stolen) should be fixed". Likewise, from (the quality of) the article also: "For[5] stealing away men of noble family, and especially women, "and precious gems of all kinds, he deserves (the punishment of) death." For stealing away men not of a high family, however, there is a different punishment: "The[6] punishment for one who steals away a man, "is the highest amercement; in the case, however, of a like offence against "a woman, he shall be deprived of his entire property; and a corporal punish-"ment for one who steals a maiden." In the case of articles of trifling value, however, *vide* the text of **Nârada**[7]: "In the case of articles of a "value less than a *mâsha* a fine five times the price of the article shall be "imposed. For stealing wood, a pot, grass and the like, as also articles made "of clay; bamboo, and vessels made of bamboo[8]; muscles, bones and hides. "For stealing vegetables with green roots, and fruits and roots, prepara-"tions of cow-milk, and of the sugar-cane; and salt or oil. Cooked "food, (specially) prepared food, fish, flesh; and every sort of object of "(any) value, a fine five times the value (shall be the punishment)."

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[1] Ch. XIV. 21. Gautama Ch. XII, 15–17.

[2] Bâlambhaṭṭa assigns this text to Vasishtha, but it is not found in the Dharma. sutras of that author.

[3] There is a mistake in the print of the text here (p. 148. l. 12). Instead of षोडशद्वात्रिशन्न तु षाष्टिगुणा read षोडशद्वात्रिशच्चतुःषष्टिगुणा.

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[1] Ch. VIII. 337–338.

[2] Ch. VIII. 320.

[3] or its value.

[4] See Manu Ch. VIII. 321–322. Bâlambhaṭṭa assigns this text to Nârada.

[5] Ch. VIII. 323.

[6] Nârada: Appendix 28.

[7] Appendix 22–24.

[8] The reading in Nârada is वेतसस्य—'of rattan.'

A punishment, however, which in the cases of articles of small value is less than a hundred, or limited by fifty, the same should be adequately adjusted in (the cases of thefts of) articles of the value of a *Mâsha* or of a higher value. The text of **Manu**[1], moreover, applicable to trifling articles *viz*: "the fine shall be twice the value of the article," has a reference to articles of a very small value *e.g.* an earthen pot or the like. Moreover, there is an excess of punishment also on account of an aggravation of the offence: "The king[2] should cut off the hands of those thieves

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"who make holes in the walls and commit thefts at night, and shall impale "them on a pointed stake." Thus all these are innumerable, and cannot be specifically mentioned in regard to each article, and so a lower or higher form of punishment should be determined by regard to the several circumstances such as the caste (of the parties), the incidence (of the crime), and like others.

Of travellers, however, there is no punishment for slight infringements, as says **Manu**[3]: "A twice-born (man) who is travelling and whose "provisions are exhausted, shall not be fined, if he takes a couple of "stalks of sugar-cane, or a couple of roots from the field of another man." Also: "Of gram, rice, wheat, barley, mallet and bean, a handful may be "taken by those who are on their way in a journey, if not prohibited. "Likewise, he who has not eaten at six meals, may take at the seventh "meal from a man who neglects his sacred duties, without (however) "making a provision for the morrow[4]."

The Author mentions a punishment even for one who is not himself a thief, but who helps a thief

Yâjñavalkya Verse 276.

To him who knowingly supplies food, lodging, fire, water, counsel, implements, and expenses, to a thief or a murderer, the puhishment shall be the highest.

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[1] Ch. VIII. 329.

[2] Author not known.

[3] Ch. VIII. 341.

[4] Ch. XI. 16. *i. e.* when a man has been compelled to fast for three successive days and three nights he may (even) steal, but only from one who does not answer the responsibilities enjoined by the S'âstra, and, the theft also should not be with a view to store up provisions, not even for the morrow, but simply to satisfy the hunger so keenly felt.

Mitâksharâ: *Food* (**Bhaktam**) for eating; *lodging* (**awakas'o**) *i. e.* a resting place; *fire* (**agniḥ**) for removing the cold of the thief; *water* (**udakam**) for one thirsty; *counsel* (**Mantraḥ**) *i. e.* advice in the matter of a theft; *implement* (**upakaraṇam**) *i. e.* the means for committing a theft; *expenses* (**wyayaḥ**) *i. e.* in the journey of one going out to another province for committing a theft. He who offers these *to a thief* (**chaurasya**), or *to a murderer* (**hanturwâ**), *even* (after) *knowing him* (**jânannapi**) (to be such), for him the punishment shall be the highest amercement. A blame attaches even to those who tolerate[1] a thief, since **Nârada**[1] has said: "Or "those who neglect[2] them though able (to arrest), partake of (the "responsibility of) their crime themselves."

Yájñavalkya Verse 277.

For giving a blow with a weapon, and also for causing an abortion, the punishment is the highest; for the killing of a man or a woman the punishment may be the highest or the lowest.

Mitâksharâ: For giving a blow with a weapon on the limbs of another, and for causing abortion, in cases other than that of a female slave or of a Bráhmaṇa, the punishment *i. e.* the penalty shall be the highest. For causing the abortion of a female slave however, a fine of a hundred has been mentioned (in the text[3]): "One who destroys the fœtus of a female slave." As for the fœtus of a Brâhmaṇa, the Author will mention an extension of the rule in[4]: "One who destroys a fœtus unknowingly &c." And for the murder of a man or a woman, the highest or the lowest punishment must be understood as laid down, having regard to the character, mode of living, and such other circumstances (regarding the deceased).

Yâjñavalkya Verse 278.

A woman who is superlatively wicked, who destroys males, who breaks reservoirs, shall, if not pregnant, be plunged into water after a stone being tied.

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[1] Ch. XIV. 19.

[2] उपेक्षा—is forbearance or neglect. The meaning here is that those men who exhibit a kind of passiveness regarding criminals, even when they have the capacity to arrest them, knowing them to be such, render themselves responsible as accomplices.

[3] II. 236 see p. 363 l. 23 above.

[4] Bâlambhaṭṭa says it is in the Prâyaschittadhyâya, but it is not to be found there.

Mitâksharâ: Moreover, one who is extremely wicked is a *superlatively wicked woman* (vipradushta) *e. g.* one who causes the destruction of a child in embryo *i. e.* who causes herself to miscarry; as also she who kills a man, and one who breaks reservoirs—any one of these women, if not pregnant, after tying a stone round their neck, should be plunged into water, so that they may not float up.

Yâjñavalkya Verse 279.

One who administers poison, or sets fire, or kills her husband, preceptor, or her own child, shall be deprived of her ears, hands, nose and lips, and be caused to be killed by bullocks.

Mitâksharâ: Moreover, (here again) one who is not pregnant is understood. She also who administers *i. e.* puts poison into the food, drink &c. with the object of killing others; she, again, who sets fire to a village &c. that it may be burnt; likewise, one who causes her own husband, preceptor or children to be killed, such a one should have her ears, hands, nose and lips cut off, and caused to be killed by means of wild and untamed bulls.

This statement of a rule regarding a Sâhasika and made in the chapter on theft should be understood to be made incidentally.

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Where a murder has been committed and the murderer is not known, the Author mentions the means of detecting the murderer

Yâjñavalkya Verse 280.

Of one who is killed by an unknown (person), the sons and relations should be immediately questioned as regards any quarrel; as also seperately such women of his as were in love with other men.

Mitâksharâ: Of one who has been killed by an unknown individual; the sons, and all near relations, should immediately be questioned as regards any quarrel thus: "With whom had he had a quarrel ?" Likewise, such women belonging to the deceased and who were in love with other men *i.e.* were adulterous, should also be questioned.

How should they be questioned? So the author says

Yâjñavalkya Verse 281.

"Was he fond of women, wealth, or a vritti?" or, "with whom did he go?" Or, (the king) may minutely make inquiries of the people living in the vicinity of the place of murder.

Mitâksharâ: Was he fond of women? had he a greed for money? or had a desise to earn a livelihood? or thus: for what woman had he a fondness and how is she connected? For which wealth had he a fondness? or whence did he think of securing his livelihood? or with whom did he go to another country? Thus in various ways should his adulterous wives he separately questioned after giving them assurances.

Likewise such men *e. g.* the cowherds, foresters and others as were in the neighbourhood of the place of murder should also be questioned in confidence. Thus after determining upon the murderer by several means such as these, a punishment adequate for him may be declared.

Yâjñavalkya Verse 282.

Those who set fire to a field, a house, a forest, a village, a pasture ground, or a threshing floor; likewise he who carnally knows the wives of the king, shall be burnt in a fire of grass.

Mitâksharâ: Moreover those who set fire to *a field* (**Kshetram**) in which the fruits and the crops have ripened. **Wes'ma** means a house; *a forest* (**wanam**) *i. e.* a wild forest or a pleasure forest; village; *a pasture ground* (**vivîtam**) has[1] been explained; or a *threshing floor* (**khalam**); as also he who has carnal intercourse with a wife of the king; all these should be surrounded by the *viraṇa*[2] grass and burnt. This punishment has been mentioned here, as it is incidental to a punishment of death, (which accrues) to the incendiaries of fields &c.

Thus ends the chapter on Theft.

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[1] See Yâjñ. II. 160 (2) and the Mitâksharaâ thereon p. 299 ll. 57 above.

[2] Straw—a kind of grass at the root of which is found the fragrant *khùs* or वाळा See Amara II- 4. 164.—the *Andropogan Muricatus.*

CHAPTER XXIV.

On Adultery with women.

The Chapter of Law called 'Adultery' is being now propounded. With a view to adjustment with the punishments for the lowest and other *Sâhasas*, a threefold division of the same has been specified by **Vyâsa:** "That has been designated as of three kinds, the lowest, the "middlemost, and the highest. Conversations with another's wife in an "improper place, or at an improper time, or in a solitary place, throwing "side-long glances at each other, and (exchanging) smiles, is known as the "lowest *Sâhasa*. Sending fragrant scents and flowers, odours, ornaments, "clothes, and causing allurement by food and drink, is known as the middle-"most *Sâhasa*. Sitting together in the same seat in a solitary place, with "mutual contact, as also pulling each other's hair, is known as a complete "act of adultery". *Adultery* (**Sangrahaṇam**) is the (carnal) union of a man and a woman.

As the detection of adultery is necessary, for the punishment of one who commits it, the Author mentions the means of detecting the same

Yâjñavalkya Verse 283.

A man should be caught in the very act of adultery, with another's wife; or while holding each other's hairs, or by other signs of excitement of lust, also by the admissions of both.

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Mitâksharâ: A man should be detected as intent on adultery by the knowledge derived from the signs of holding each other's hairs, and the like. **Kes'âkes'si** holding each other's hairs is the (particular kind of) diversion in which each holds the other's hairs. Under the rule[1] of grammar

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[1] Pâṇini II. 2. 27. The rule means this. When two homonymous words both being in the locative case (तत्र), or both being in the instrumental case (तेन), are compounded, the sense being—'this happens therein with that,' the compound so formed is Bahuvrihi.

The locative case is used when the sense is that of seizing; and the instrumental when the sense is that of striking. *e. g.* in the example here केशेषु केशेषु गृहीत्वा इदं क्रीडनं प्रवृत्तं—इति· केशाकेशि· The same would be the form when two combatants hold each other's hair in a duel. An example of the instrumental is दण्डादण्डि, मुसलामुसलि &c,

"Two homonymous words coming together indicating–this happens therein or with that" a Bahuvrihi compound is formed; and under another rule[1] *viz*: "The affix *ich* (इ) comes after a Bahuvrihi when the compound denotes a reciprocity of action", the affix *ich* is added at the end of the compound. And as it is in an adverbial[2] form, the instrumental case is silent. Therefore the meaning is this: From his amusing himself with another's wife when both hold each other's hairs, or from the fresh signs of amorous intercourse, such as the marks created by the nails of the hands, or by the teeth and the like, or by the admission (of the fact) by both, having known him to have attempted to commit adultery, he should be arrested. The use of the expression 'another's wife' is with a view to exclude a woman who has been appointed[3]' (to beget issue), or a protected female slave.

Yâjñavalkya Verse 284.

Touching the knot of the lower garment, the breasts, the upper garments, thighs, and the hair; holding a conversation at an improper place and time, as also sitting together on one seat.

Mitâksharâ: Moreover; he again who behaves as if with a lustful desire towards another's wife by touching the part (of her body) bearing the knot of the (lower) garment, or the garment covering her breasts, or the lower parts of her body, or the hair of her head; likewise, he who holds a conversation with her at *an improper place* (**Ades'e**) *i. e.* in a place which is lonely, or where crowds of people have gathered together, or which is obscured by darkness; or who closets himself with another's wife on one sofa or any other like seat, as if intent on having carnal intercourse with her, such a one should be arrested as one who had attempted to commit adultery.

This rule, however, applies to a man about whom there is a suspicion as to an offence. Of any other, however, there is no guilt, as says **Manu**[4]: "That man, however, not before accused, who holds conversation for some "(good) reason, shall not incur any guilt, since in him there is no trans"gression." It has been said by the same **Author**[5], that he who forbears when touched by another's wife—such a one also may be apprehended: "He who touches a woman at an improper place, or forbears when (him"self) touched, all that is considered as adulterous intercourse with "mutual consent." It has been said by **the same sage**[1] that he, moreover, who boastfully declares before a company of gallants thus: 'I have enjoyed this charming accomplished woman times out of number'—such a one also may be apprehended: "When a man, actuated by vanity, folly, or brag"garism, declares himself that he has enjoyed (the love of) a certain "woman, that is also termed an offence of adultery."

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[1] Pâṇini V. 4–127.

[2] The whole formation is based on five rules of grammar *viz.* the two mentioned above, and three more *viz.* Pâṇini VI. 3–137, under which the vowel at the end of the first member is elongataed (*viz.* केशा); the adverbial compound has a support from Pâṇini II. 1–17; and the dropping or elision of the instrumental is accounted for by Pâṇini II. 4. 82. See Bâlambhaṭṭi.

[3] *i. e.* under a Niyoga or appointment to beget an issue.

[4] Ch. VIII. 355.

[5] Ch. VIII. 358.

The Author mentions a penalty for a man and a woman who, having been once prohibited, again hold conversation or do like acts

Yâjñavalkya Verse 285.

A woman being forbidden shall pay a hundred, while a man two hundred, as a penalty; when the prohibition had been to both, their punishment is the same as for adultery.

Mitâkshâra: *A prohibition* (**Pratishedhaḥ**) is that where, one is prohibited *e. g.* by the husband, the father or the like. A woman who has been forbidden from holding conversation with a man, and attempts to do the same (again), shall pay a hundred paṇas as penalty. A man, moreover, who sets about when similarly probited, shall pay two hundred. When, however, both the man and the woman were prohibited, and again attempt it, then the same penalty as will be hereafter mentioned for adultery *i. e.* according to the *Varṇas* (of the parties), shall be understood (for them). This rule, however, holds in cases other than those of the wives of *Châraṇas*[2] and the like, since **Manu**[3] has laid down: "This "rule does not apply to the wives of *Châraṇas*, nor of those who live on "(the[4] intrigues of) their own (wives); for such men send their wives "(to others), or concealing themselves, allow them to hold criminal inter"course."

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[1] Not found in Manu. The text, however, is to be found in Nârada Ch. XII. 69.

[2] *Charanas*—are actors or singers, or persons of low repute maintaining themselves by mendicancy and singing &c.

[3] Ch. VIII. 362.

[4] आत्मजीविनः (*Âtmajivinaḥ*). 'who maintain themselves on their own.'

The Author now mentions the penalty for Adultery

Yâjñavalkya Verse 286.

In the case of one of the same class, the highest amercement; in an Anuloma[1] (intercourse) the middle (amercement); but in a Pratiloma[1], death of the man, and the lopping off of the ear and the like of the woman.

Mitâksharâ: In the case of a man of any of the four *varṇas*, a man shall be fined one thousand and eighty *paṇas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then he shall be fined in the middle amercement. When, moreover he has intercourse with a woman of his own *varṇa* who was not under (any one's) protection, or with a woman of a lower *varṇa*, who was under protection, then a special penalty has been stated by **Manu**:[2] "A Brâhmaṇa shall be fined a thousand, "when he has intercourse with a guarded *viprâ*[3] woman against her will;

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"he shall be fined five hundred when he had connexion with one who was "willing (378). A Brâhmaṇa shall be compelled to pay a fine of one "thousand if he has intercourse with women of the two (classes)[4], who are "under protection; for (a similar offence against) a *Sûdrâ* woman, the fine "for a *Kshatriya* and *Vais'ya* shall be one thousand (383)."

This moreover, shall be understood to hold in the case of women other than the wives of the preceptor, or friend, since **Nârada**[5] has observed: "Mother, mother's sister, mother-in law, maternal-uncle's wife, father's "sister, the wife of a paternal-uncle, or a friend, or a pupil, sister, her "friend, daughter-in-law (73); Daughter, spiritual preceptor's wife, a "woman of his own *Gotra* come (to him) for protection, the queen, a "female ascetic, nurse, virtuous woman, and a woman who is of the highest "class (74); When a man carnally knows any one out of these women, "he is said to have committed the offence of violating[6] the bed of a

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[1] See A'châradhyâya Chapter IV. These terms are used with reference to the *man* who commits the act of adultery.

[2] Ch. VIII. 378; 383.

[3] *A Brâhmaṇi* woman.

[4] *i. e.* those mentioned in Manu Ch. VIII. 382.

[5] Ch. XII. 73–75.

[6] गुरुतल्पग *i. e.* the special kind of vice where the offence is that of knowing carnally the preceptor's wife.

"preceptor. For such a crime, no other punishment is ordained than the "excision of the organ (76)."

In the case of a *Pratiloma* offence, *e. g.* intercourse with a woman of the highest class, death (is the sentence) for a male of the Kshatriya or other (lower) class. This, however, has a reference to a guarded woman; for any other there is a pecúniary fine *vide* the text of **Manu**[1]: "But even "these two[2], if they offend with a Bráhmaṇi, who is guarded, shall be "punished like a *S'ûdra*, or be burnt in a fire of dry grass (377). If "a Vaiśya or a man of the Royal tribe has intercourse with an unguarded "Bráhmaṇi, let him (*i. e.* the king) fine the Vaiśya five hundred, but the "Kshatriya one thousand (376)." Of a *S'ûdra* moreover having intercourse with an unguarded woman of the highest class, the punishments are the excision of the organ, and confiscation of the entire property; and of him, having intercourse with a guarded woman (of a like description), the sentence is death and confiscation of the entire property, as has been stated by the **same sage**[3]: "A *S'ûdra* having intercourse with a woman of a "twice-born class—whether guarded or unguarded—if unguarded, he loses "the organ, and all his property, if guarded, everything (even his life)."

Of a woman, however, having intercourse with a man of a lower tribe, the ears—and by the use of the word Âdi, 'and the like', the nose—should be lopped off. For one having intercourse with a man of a superior or equal tribe, a fine should be ordered.

This rule regarding the sentence of death &c., is (intended) only for the king, he alone having the right to govern, and not for every twice-born[4] individual. For such a one the holding of a weapon having been prohibited by the text[5]: "A Brâhmaṇa should not take up a weapon even for "inspecting (it)". When, however, there is danger of the proper procedure being thwarted, then one may himself kill an adulterer and the like, the taking up of arms at such a time having been permitted by the text[6]: "Twice-born men may take up arms when (the performance of)

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[1] Ch. VIII. 377 ; 376.

[2] *i. e.* the Vais'ya and Kshatriya referred to in VIII. 376.

[3] Ch. VIII. 374.

[4] Here the term used is quite general, but from the text quoted next, it appears to be intended for a Brâhmaṇa.

[5] The Author of this text is not known. Bâlambhaṭṭa, assigns it to Gautama, but it is not to be found in that book. Gautama on the other hand allows the profession of a warrior for a Brâhmaṇa when he cannot obtain his livelihood by the ways prescribed for him. See Ch. VII. 6. To the same effect are the texts of Manu cited next.

[6] Ch. VIII. 348.

"Dharma is being obstructed"; also[1]: "By killing a desperado (intent "on doing harm), the slayer incurs no guilt, whether (he does it) publicly "or in secret; (for in such a case) fury recoils upon fury."

Likewise in the case of a Kshatriya or a Vais'ya, each having intercourse with a woman of the other class[2], a fine in each case of one thousand *paṇas* must be understood. That has been stated by **Manu**[3]: "If a "Vais'ya approaches a guarded female of the Kshatriya caste, or a "Kshatriya a guarded Vais'ya woman, they both deserve the same punish"ment as in the case of an unguarded Brâhmaṇa woman."

On the occasion of considering offences regarding the wives of others, the Author mentions the punishment (for an offence) regarding a maiden also

Yâjñavalkya Verse 287.

If any one kidnap a maiden having ornaments on, he shall pay the highest amercement, and the lowest amercement in other cases, when the maidens belonged to the same *varṇa*; in the case of a maiden of a superior class, death has been ordained (as the punishment).

Mitāksharā: One kidnapping a maiden of his own class, who is about to be married, and who had been decked with ornaments, shall be puinshed in the highest amercement; and one kidnapping a maiden of his own tribe not approaching a marriage, (shall be fined) in the lowest amercement. For a Kshatriya or any other carrying away a maiden of the highest tribe death alone (is the sentence). From the rule as to punishment, it also appears (to be intended to be laid down) that the girl should be taken away from her abductor and be made over to some one else.

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[1] Manu Ch. VIII. 351. See page 36. ll. 5-8.

[2] See the text of Manu cited next which makes this clear.

[3] Ch. VIII. 382.

The Author mentions a penalty for taking away girls of inferior tribes

Yâjñavalkya Verse 288 (1).

In the case of willing maidens of inferior classes, there is no offence; otherwise, however, (there is) a punishment.

Mitâkharâ; If one carries away a maiden of an inferior tribe who is full of love (for him), then there being no offence, (there is) no punishment. *Otherwise however* (**Anyathâ tu**) *i. e.* for one kidnapping an unwilling one, the lowest amercement shall be the punishment.

The Author mentions a penalty for defiling a maiden

Yâjñavalkya Verse 288 (2).

For defiling, however, the lopping off of the hands; and for (doing) similar acts towards one of a higher class, death.

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Mitâksharâ: 'In the case of maidens of lower tribes' is understood. If one forcibly defiles, by nail-scars or otherwise, a maiden, who had no sexual desire, then his hand should be lopped off; when, moreover, he defiles a maiden of a like description, by penetrating into the female organ by thrusting in his fingers, then the punishment is the lopping off of the fingers together with the fine of six hundred as prescribed by **Manu**[1]: "But if any "man through insolence forcibly cotaminates a maiden, two of his fingers "shall instantly be cut off; and he also deserves a fine of six hundred." When, however, he similarly defiles, as before, one having a sexual desire, even then a special rule has been stated by the same[2]: "A man of an "equal class defiling a maiden having a sexual desire, shall not incur the "(punishment of) amputation of his fingers, but shall, however, be "compelled to pay a fine of two hundred, as a deterent from a (like) "repetition."

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[1] Ch. VIII. 367.

[2] Ch. VIII. 368.

When, however, a maiden herself or a sharp woman defiles another maiden, there also a special rule has been stated by the same sage[1]: "A maiden, who herself operates upon a maiden, for such a one the "fine is of two hundred (369). But a woman who pollutes a damsel shall "instantly deserve a shaving, and also the lopping off of her two fingers, "and likewise (the punishment) to be carried on a donkey." 'Operates "upon a maiden' *i. e.* penetrates into the female organ of a maiden.

When, however, a man has intercourse with a maiden of the highest tribe, then whether she was willing or unwilling, a Kshatriya and others shall invariably incur death *vide* the text of **Manu**:[2] "A man of a "lower tribe who has intercourse with a woman of a higher class, shall "deserve corporal punishment."

When, one has intercourse with one of his own class who has a sexual desire, then he shall pay the maiden's fee of a pair of cows to her father; if she be unwilling, the maiden's fee to the father, and an equal (amount) as fine to the king. For one having intercourse with one of his own *varṇa* but having no desire, corporal punishment alone: as says manu:[3] "He who has intercourse with one of an equal class, shall "pay the maiden's fee to the father :if he desires," also: "He who "violates an unwilling maiden shall instantly suffer corporal punish-"ment; but one defiling a maiden of an equal class who has a sexual desire, "shall not suffer corporal punishment."

Yâjñavalkya Verse 289.

For slandering a woman, a man shall pay a hundred; and a two hundred for levelling a false accusation. For connexion with beasts he shall be compelled to pay a hundred; and the middling fine for connexion with a low woman or a cow.

Mitâksharâ: Moreover, having regard to the context, a maiden is intended here by the word 'woman'. If any person utters a slander concerning such a one *viz.* by declaring defects in her, such as the diseases of epilepsy, pulmonary consumption, and the like complaints of long standing, and of a bad type, even if they be (*i. e.*) existing (in her); or of having had mixed intercourse, and thus slander her saying 'She is not a maiden', such a one shall be compelled to pay a hundred. For *a false accusation however* (mithyâbhîsa'nsane, tu) *i. e.* for declaring defects in her, which (in fact) did not exist, he shall be compelled to pay two hundred. For connexion with beasts excepting a cow, he should be compelled to pay a hundred. He, moreover, who has connexion with a *low woman* (hinâm striyam) *i. e.* a woman who has intercourse with low people—and since there is no particularisation—, whether she be willing or unwilling; or who has connexion with a cow, such a one shall be punished with the middlemost amercement.

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[1] Ch. VIII. 369-370.

[2] Ch. VIII. 366.

[3] Ch. VIII. 366 and 364.

The Author mentions a penalty for having intercourse with a common woman

Yâjñavalkya Verse 290.

In (the case of) women who are protected slaves of another, and likewise (of) kept mistresses, even though intercourse with them is permissible, a man shall be compelled to pay a fine of fifty ***paṇas.***

Mitâksharâ: 'One who has connexion' this has to be understood. The women of the *varṇas* already[1] described are (considered as) slaves; these very women are prohitited by the master from intercourse with other men with an injunction to stay at home with the object of avoiding any lapse of service, these are known as *Avaruddhâ* or protected slaves. Women restricted in the matter of sexual intercourse to certain persons are known as *Bhujishyâḥ* or kept mistresses. When female slaves are *avaruddhâ Bhujishyâ* then in their case—likewise by the use of the particle *cha* 'and,' harlots, wanton women, common women and *Bhujishyâ* are also included, in their case also—although *intercourse with them is permissible* (Gamyâswapi) as they are equally available to all males, one having connexion with them shall be fined fifty *paṇas* since they are as good as other's wives, as they have been patronised by another. This has, moreover been clearly stated by **Nârada**[2]: "Wanton women, one "not a Brâhmaṇi, a prostitute, or a female slave: intercourse with these "women is permissible when they belong to a lower order; but not in a "higher order (78). When however, any one of these is a kept mistress "of another, the offence is equal to that of connexion with another's wife.

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"One must not approach these, though intercourse with them is permissi-"ble, as they are patronized by another (79)."

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[1] See Ch. XIV. above p. 321 ll. 8–22.

[2] Ch. XII. 78–79.

An objection.

Indeed[1], it is not correct that wanton women and the like others, being common women, intercourse with them is permissible. The type called ‘common women’ are not met with in this world either as forming any separate caste or mentioned in any *Sâstra*. For the wanton women, as even the female slaves, are after all women of (some) *varṇa*, *Vide* the text of **Manu**[2]: “That “woman who abandons her (own) husband and goes to another man of her “own *Varṇa* out of love (for him) is called a *Swairni'* or a wanton “woman; slavery is ordained in the descending order of the *varṇas* “and not in the reverse order.” And in the case of women having a *varṇa* it is not possible for connexion by another man when the husband is living, or even when he is dead. Since a prohibition has been ordained in the **text**[3]: “Though destitute of virtue, or seeking “pleasure (elsewhere), or devoid of good qualities, (yet) a husband “must be constantly worshipped as a god by a faithful wife (154). “At her pleasure let her emaciate her body by (living on pure) “flowers, roots and fruit; but she must never even mention the name “of another man after her husband has died (157).”

Nor even can a woman be a common woman in her maiden condition. For a gift is ordained only in the case of a maiden, who has been under the guardianship of her father or any other relation. And even in the absence of a giver, it is only one of such a description regarding whom a choice by herself has been ordained. Nor, moreover, can there be a deprivation of the privilege of one's *Dharma* (merely) on account of a condition of slavery. Slavery means only dependence, not apostacy from one's own religion.

Nor, even a prostitute is a common woman, since[4] there is no caste where an intercourse is permissible excepting with such as have sprung from the (union with the women of) lower orders. And if she falls within (one of) these, then a connexion is not permissible as (as been mentioned) before. If (it be that) they are sprung from a *Pratiloma* union, then certainly they are much more not approachable.

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[1] From here commences the objection, that the statement that the women referred to here are approachable by all is not proper. And for this purpose, the objector takes all the cases and examines them *viz*; (1) of the married women who have fallen off; (2) of the maidens and (3) of prostitutes.

[2] Not found in the published edition of Manu.

[3] Of Manu Ch. V. 154 and 157.

[4] Here, three cases are possible. A prostitute may either belong to a caste (1) other than that sprung from an Anuloma connexion of the *Varṇas*, or(2) which sprung from such a connexion, or (3) which originated in a Pratiloma connexion of the *Varṇas*, and the author examines each case. See Subodhini p. 106 ll. 24-27 and Bâlambhaṭṭi p. 340.

Therefore, on account of the degradation incurred by these women by coupling with another man, and by a further repetition of a censured act, as also by reason of the rule of prohibition against an intercourse with one who has fallen, these women are not fit to be approached by all men[1].

The Answer.

[The answer is] This is true. But here, there being an (absolute) absence of a visible obstruction *e. g.* the fear of the father or other guardian, or of the Royal sanction, the use of the language[2] that 'a connexion with them is permissible' is proper. And also, by the **text**[3] "In the case of protected female slaves or kept mistresses &c," the punishment being confined to a particular case *viz.* of a woman who has resorted to one particular man, when that condition does not exist, an absence of a punishment is necessarily inferred. And again in the case of wanton women and others there is an absence of punishment, since no rule has been ordained; and also an inference may be drawn from what is indicated in the **text**[4]: "He should not cause anything to be paid "by a maiden who approaches a man of a higher caste."

An expiation[5], however, is ordained equally for the women who are approached, as also for the men who have connexion, on account of falling off from one's own religion.

As for the inclusion of prostitutes among the *Varṇas*, which has been maintained above as an inference from the fact that there is no separate caste for them on the argument[6], that prostitutes are human beings, and must therefore be included as falling within any of the *Varṇas* or *Anuloma* castes, as is the case with a Bráhmaṇa, that is not correct. These castes, *e. g. Kuṇḍa*[1], *Golaka* and the like, are unending. Therefore the inference must be drawn that a caste known as *Vesyâ* being well known in the world similarly as that of Brâhmnaṇa and the others, is of an old origin, having sprung from a connection with a *Vesya* female with a man of her own caste or of a superior one, and deriving maintenance from having sexual intercourse with men. Nor is this tradition without a basis: It has indeed been recorded in the **Skandapurâṇa**[2] thus: "There are certain

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[1] Here ends the objection, and the Answer commences next.

[2] Of Yâjñavalkya II. 290.

This passage has been referred to in two recent cases *viz* in *Chunilal* vs. *Surajram* 33 Bom. 433 at p. 440=11 Bom. L. R. 708, where Chandavarkar J. discusses it; and in *Hiralal Singh* vs. *Tripura Charan Roy* 40 Cal. 650 (F. B.) at p. 663, where after quoting Dâyabhâga Ch. IV. Sect. III. § 37, Mookerjee. J. observes as follows;

"The language used in this passage does not restrict its application to the *Stridhan* property of a respectable woman only; the language is comprehensive enough to include *stridhan* property of a prostitute *who does not by the mere fact of lapse into prostitution cease* to *be a Hindu or to be subject to the rules of Hindu Law.*" and Yâjñavalkya II. 290 and the Mitâkshara thereon has been relied upon.

[3] of Manu Ch. VIII. 365.

[4] See Prâyaschittâdhyâya p. 287 ll. 7-8. also *Chunilal* vs. *Surajram* 33 Bom. 433 at p. 440.

[5] The full syllogism would stand thus;
All human beings must belong to some *Varṇa* or caste.
The *Ves'yâs* are human beings.
The *Ves'yâs* belong to a *Varṇa* or a caste.

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[1] These are defined in Manu Ch. III. 174. They are sons begotten on another man's wife; when born during the husband's life-time, the son is called a *Kuṇḍa*, and when born after his death, he is known as a *Golaka*.

[2] The passage in full has been given in the note on pp. 154–155 of the text. It details the account of the origin of the *Ves'yâ*, describes their five-fold divisions, the characteristics of each, and the general rules governing the class.

The following is the translation of the passage

"The caste known as the Ves'yâ has been known from long before, Oh Dwijas! Born of (an intercourse between persons of the) same caste or of different castes, and earning its livelihood from sexual intercourse with males. (1)

"Courtezans known as Panchachudas lived of old in the City of the Gods. Once upon a time they performed a singing dance in the presence of the Lord of Gods. (2)

"The sage Durwâsa, the best of the sages, learned, fiery and endowed with a portion of the God S'iva in him, being pleased with their dance and singing, ejaculated 'Excellent!'. (3)

"He shouted loudly often and often 'excellent', being full of delight. Seeing this wonderful sight, the women viciously laughed loudly (4). (and exclaimed) "Does this reciter of the Vedas appreciate our skill in singing?"

"Thus seeing from the signs that he was being insulted, the sage became excited with anger (5) and delivered a curse thus: "Hence to the region of Earth! You do not deserve to be among the Gods."

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"Then being full of fright, the Apsarasas began to cry in humility (6).

"They respectfully begged: "Oh protector of the humble, save us!" (7). Thereupon the anger of the angry sage vanished, and he delivered the cancellation of his curse in the presence of the God S'akra thus: "There shall arise a fifth caste from these, from (people of) the four Varṇas, and then the redemption of these will take place, and never otherwise, oh Never-aging ones!" (9).

"Those women too having come down upon the region of the Earth, and being wanton and addicted to sensualities, with great delight did service to the castes of the twice-born *Varṇas* (10).

"The progeny begotten from these is known as the *Ves'yâ*; I shall describe their five-fold distinction, according to their qualifications. (11).

"The Ves'yâs, are known as Kalâvati, Rambhâ, Nâyikâ, Ulúkhali. Among Ves'yas, the Nâyikâ is known by her beauty, and is celebrated for the splendour of her dress. (12).

Apsarasas called *Panchachûdâ*; their progeny is known as the *Vesyâ*, and is regarded as a fifth caste." Therefore as there is no rule for them to marry and remain fixed to one man, in having connexion with a male of an equal or superior class there is no sin implied, nor (is any) penalty

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(incurred) by men having access to them when these are not under the protection of any one. Although there is no penalty, still invisible sin is verily incurred since the rule is that "a man should always restrict himself to his wife;" as also an expiation has been ordanied in the text: "For having intercourse with brutes or prostitutes, the *Prâjâpatya* "expiation is ordained."

By the text.[1] "In the case of protected female slaves," while prescribing a punishment for a connexion with a kept mistress, such as a female slave, a wanton woman and the like, it comes to be inferentially laid down that there is no penalty when these are not in the keeping of any one. So, the Author mentions an exception to this.

Yâjñavalkya Verse 291.

For forcible intercouse with a *Dâsi*, the fine is declared to be ten *paṇas*. For several (having intercourse) if she is unwilling, twenty-four for each separately.

"Kalâvati is versed in amorous intercourse and is one who has worked for the art of singing, and Rambhâ is known to be an adept in matters of beauty, art, and dress (13).

"That woman who always has intercourse with two, three or six men, and who is obsolutely wanting in art or beauty, is known as Ulúkhali (14).

"That woman who abandons her own husband and goes to another man of her own *Varṇa* out of love (for him); is called a *Swairiṇi*; slavery is ordained in the descending order of the *Varṇas* and not in the ascending order (15).

"Restrained in speech, and restricting herself to intercourse with a man of a heigher tribe she is regarded as a Dharma-patni, and is considered as a *Pativratá* even among harlots (16).

"She, who having once accepted a fee from one man does not desire another who offers one or many rupees, or one who offers the (sovereignty) over the three worlds, or even Indra (17).

"Such a one, even though a *Ves'yá* is to be regarded a virtuous and chaste woman, and is respected as a lawfully married wife (18)."

[1] Yâjñ. II. 290.

Mitâksharâ: For a man havinig *forcible* (**Prasahya**) *i. e.* compulsoy intercourse, and without the payment of her fee, with a woman of the class who maintain themselves by sexual connexion with men, *e. g.* a female slave, a wanton woman or the like, the fine is ten *paṇas*. If several men have intercourse by force with one single woman even when she was unwilling, then each shall be punished with a fine of twenty-four *paṇas*, separately. If however, after paying the fee as desired by her, they afterwards have connexion with her by force, even when she was unwilling, then there is no guilt of theirs, provided there is no appearance of a disease in her; since **Nârada**[1] has laid down: "A female slave who does not go when called upon, shall not be punished, if she was diseased, or exhausted, or engaged, or was doing the service of the king."

Yajñavalkya Verse 292.

A prostitute who has received her wages, shall, if unwilling, pay double; under similar circumstances the man also shall be compelled to pay an equal amount if none is received.

Mitâksharâ: When after accepting her fee, and even when in good health, she is not willing for the owner of the money, then she shall pay twice the amount of the wages. Similarly of a man who having paid the wages, is himself unwilling, he shall indeed forfeit the amount (paid by him), for the same sage[2] has said: "If a public woman declines to receive a man after having received her fee, she shall pay twice the amount (of the fee). If the man be unwilling, he shall forfeit the amount, even if he had paid the wages." Similarly another special rule also has been stated by the same sage[3]: "The same (fine shall be imposed) on a man who does not pay the (stipulated) fee, after having had connexion with a woman (of this description) (18); or who had forcible connexion and, who has thus caused scars by hand, teeth, or nails. Should a man have connexion with her in an improper part, or cause her to be approached by many, he must pay eight times the amount of her fee, and a penalty in an equal amount (19). Women who are prominent among *Vesyâs*, who are adepts in matters of sexual intercourse, and who are residents of the houses there, shall declare a decision in case of any doubt, in disputes arising therefrom."

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[1] Not found in the published edition of Nârada.

[2] Nârada Ch. VI 18.

[3] Ch. VI. 18, 19.

Yâjñavalkya Verse 293.

For a man having intercourse with a woman in an improper part, as also with a man, or for passing urine, the fine shall be twenty-four *paṇas*; as also for having intercourse with a female ascetic.

Mitâksharâ: Moreover, he who has sexual connexion with one's own wife in the mouth or any such other part, or discharges the urine or excretion in the mouth of a male; or likewise has intercourse with a female ascetic shall be fined twenty-four *paṇas*.

Yâjñavalkya Verse 294.

For having connexion with an *Antyâ* woman he shall be branded with an obscene mark, and banished. If a *S'ûdra* has a like intercourse, he himself becomes an *Antya*. For an *Antya* having intercourse with an *Aryâ* woman, (death is the punishment).

Mitâksharâ: An *Antyâ* woman is a female of a *Chandâla*. For having connexion with her, members of the three *Varṇas* who are not ready to perform an expiation, shall be fined thousand *paṇas*- according to the rule of **Manu** viz. "and a thousand for an *Antyâ* woman," and then *shall be branded with an obscene mark* (**Kubandhena ankyaḥ**) *i. e.* indecent mark *e. g.* the mark of the female organ, and the king should banish them from his kingdom. For one, however, who is ready for an expiation, fine alone (shall be the punishment). A *Sûdra*, moreover, having connexion with a *Chândâla* woman, himself becomes an *Antya* or *Chândâla*. For one however born of an *Antyâ*, *e. g.* a Chândâla or the like other, death alone (is the punishment) for having connexion with a woman of a higher class.

Thus ends the chapter on "Intercourse with women"

In the book on *Vyawahâra*, another Title of Law *viz.* 'The mutual relations of men and women' has been propounded by **Manu** and **Nârada**. There **Nârada**[1] says: "That title of law in which the legal rules for "women and men also regarding marriage and such other relations "are stated is called 'the Mutual Relations of Women and men.'" **Manu**[2] also says: " Day and night, women must be kept in dependence by their " own males, and if they attach themselves to sensual enjoyment, they " must be kept under one's control. "

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[1] Ch. XII. 1.

[2] Ch. IX. 2.

Although a suit mutually between a husband and a wife as plaintiff and defendant in the king's court is prohibited,[1] still when transgressions of their mutual duties has been mentioned directly or by hearsay, the couple should be restored to the right path by the king by a fine or the like (penalty); otherwise he becomes blameworthy. This is the precept laid down for a king in connection with the duties of Husband and wife, in the Chapter called 'the Duties of a King' in the book on Vyawahâra. This moreover has already been discussed in detail in the chapter on General Procedure, and so has not again been mentioned by the Lord of the Yogis.

CHAPTER XXV.

Miscellaneons (Disputes).

Now is being commenced the title of Law called Miscellaneous. Its nature has been stated by **Nâraḍa**;[2] " Under the head of Miscellaneous "(Disputes) are comprised Law Suits depending on the king, (such as) transgression of the King's Commandments as also obedience towards his "injunctions (1). Grants of towns, the divisions of the constituent elements "of a state, the duties and their opposite of *Pâkhaṇḍis*,[3] *Naigamas*, *Sreṇis* "and *Gaṇas* (2). Disputes, likewise between father and son, neglect of "(prescribed) penances, abstraction of gifts (made to worthy persons), and "also the wrath of anchorites (3). Sinful confusion of castes, the rules "regarding their means of subsistence, and (in short) 'whatever has not "been noticed in the preceding titles of law, all that shall come under "(the title called) Miscellaneous (4)."

In the Title of Law called the miscellaneous, such disputes as have a reference to the transgression or the obedience of the king's commands, are closely connected with the king. In such cases, the king himself must assume the rôle of a contending party against such persons as act ' in violation of the (laws of) Smritis and usage', and decide the suit. By saying this, the definition necessarily comes to be laid thus: "That suit wherein the king is a party is called *Prâkirṇa* or Miscellaneous[1].

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[1] See Page 58. ll. 15-18 above.

[2] Ch. XVII. 1-4.

[3] All these terms have been explained before. See p. 332 ll. 10-16 and notes 1 & 2.

Page 157*.

There the Author mentions a particular penalty for a particular offence,

Yâjñavalkya Verse 295.

He who either omits or adds anything by writing in the king's edict, or allows an adulterer or a thief to escape, shall suffer the highest amercement.

Mitâksharâ: He who writes the *king's edict* (**Râjas'âsanam**) by exhibiting either less or more area of the land granted by the king, he also who after apprehending an adulterer or a thief lets him off without making him over to the king, both these shall be punished with the highest amercement.

As incidentally occuring in the context, the Author mentions a penalty also in cases other than those which depend on the king

Yâjñavalkya Verse 296.

For defiling a *Dwija* with an uneatable thing the punishment shall be the highest amercement; a Kshatriya, the middlemost; a Vais'ya, the lowest; and a S'ûdra, half of the lowest amercement (shall be the punishment).

Mitâksharâ: For *defiling* (**Dûshayitwa**) a Bráhmaṇa *i. e.* making him eat an *uneatable thing* (**abhakshyeṇa**) *i. e.* the urine, fecis &c, or any such thing mixed with food or drink, a man becomes liable to be punished with the highest amercement. For similarly defiling a Kshatriya, however, the middlemost (amercement). For defiling a Vais'ya, the lowest or first (amercement). And for defiling a S'udra, he becomes punishable with half the first amercement. This is the connection. For defiling with garlic or other similar uneatable thing, a greater or less punishment should be determined by regard to the greater or less magnitude of the offence.

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[1] This is the definition of a Prakirṇa, and the description of it given by Nârada above, as also the enumeration of titles which may be included therein. It is clear that it includes these kinds of disputes where the State is a party; *i. e.* Disputes of a Public character.

Yâjñavalkya Verse 297.

He who deals in false gold, also one who sells unclean meat, shall be maimed and also compelled to pay the fine or highest amercement.

Mitâksharâ: Moreover, a goldsmith or other dealer in gold who palms off false gold prepared by the addition of lustre (to a base metal) by chemical processes, and a butcher or other dealer in flesh, who habitually sells unclean meat *e. g.* 'the flesh of a dog or other like animal—and by the use of the word *cha* 'also', also one who palms off imitation silver or other metal (as good metal)—all these shall be (maimed by being) deprived of the three organs *viz.* the nose, the ears and the hands. By the use of the word *cha* 'and also'—shall also be compelled to pay the fine of the highest amercement, which comes to be inferred from (the use of) the (expression) cutting off of the organ. As for the punishment mentioned by **Manu**[1]: "But the king shall cause a goldsmith who behaves dis"honestly, the most nocuous of all the thorns, to be cut to pieces by razors". that has a reference to the gold of a Deity, a Bráhmaṇa or the King.

Yâjñavalkya Verse 298.

For any injury caused by a quadruped, when the keeper was crying loudly 'Be away,' there shall be no blame; similarly for like injuries caused by a wood, earth, stone, arm, or a yoked beast.

Mitâksharâ: For the offence of killing a man or the like committed by a quadruped, such as a bull, an elephant, or like animals, the blame shall not accrue to the owner of the bull or any other animal, when he was loudly crying 'Be away.' Similarly, for an injury similarly caused by the throwing of a club, a clod of earth, an arrow, or a stone, by means of the arms, or by a yoked beast *i. e.* by a horse or the like while carrying a yoke, no blame shall accrue to the thrower of wood &c. when he was crying 'Be away.' The object in stating that there is no offence in any injury caused by throwing a wood &c., is to indicate that there is no penalty for such injury. However, the penance for doing anything even unintentionally does verily exist.' By the use of the words wood &c., the missiles of *S'akti*, *Tomara* and the like are also included.

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[1] Ch. IX. 292.

Yájñavalkya Verse 299.

In the case of injuries caused by a conveyance owing to the nose-string having been snapped, or the yoke and the like having been broken, or by a rear motion (of the animals), the owner shall not be blamed.

Mitâksharâ: Moreover, the string which is used in the nostril is (called) the nose-string: that cart or other conveyance where the nose-string of a bullock yoked to the cart has given way is a **chhinna nasya** conveysnce; similarly (in the case of an injury caused) by a conveyance where the yoke has given way. By the use of the term *Âdi* 'and the like,' where the axle or the wheels or any other part is broken. By the vehicle moving rearwards *i. e.* backwards—and by the use of the word *cha* 'also' by going crookedly or coming in front. For an injury caused to men or others, the owner or the driver *shall not be blamed* (**Adoshabhâk**),

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since the injury was caused by no act on his part. So also **Manu**[1] (says): "When the nose-string is snapped, when the yoke is broken, when the "vehicle turns sideways or back, or when the axle of a conveyance is "broken, and similarly when a wheel is broken (291); When the leather-"thongs, and similarly the rope round the neck or bridle are broken, and "when the driver was crying 'Be away,' Manu has declared that in such "cases there shall be no punishment."

The Author mentions a punishment for the owner in case of neglect

Yâjñavalkya Verse 300.

The owner of an animal possessed of tusks or horns, who although having the power, still fails to relieve, shall pay the lowest amercement, and a double, if the sufferer cried for help.

Mitâksharâ: While a man is being injured by animals *possessed of tusks* (**Danshtribhiḥ**), such as an elephant &c, *or of horns* (**S'ringibhiḥ**), such as bullocks &c, who are driven by an inexperienced driver, and the owner although he was competent, does not relieve them, and then neglects them, then he shall pay the lowest amercement for having engaged an unskilled driver. When however, he does not relieve even when the sufferer cried "Oh I am (being) killed", then a double (fine shall be paid).

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[1] Ch. VIII. 291–292,

When, however, he engages only a competent driver, then the driver alone shall be punished, and not the owner as says **Manu**[1]: "If the "driver be skilful, he alone shall be fined". Moreover, special punishments shall be determined by regard to particular animals (affected): as says **Manu**[2] "If a man is killed, the guilt will be at once the same as "(that of) a thief; for large animals such as cows, elephants, camels or "horses, half of that (296). For injuring small cattle, the fine (shall be) "two hundred *paṇas*; the fine for beautiful wild quadrupeds and birds "shall amount to fifty (*paṇas*) (297). For donkeys, sheep, and goats "the fine shall be five *mâshas*; and the punishment for killing a dog or "a pig shall be *one mâsha* (298)."

Yâjñavalkya Verse 301.

He who charges an adulterer as a thief shall be made to pay a fine of five hundred. For him who takes money and lets him go, eight times (of) the same.

Mitâksharâ: Moreover, out of fear of a disrepute of one's own family, he who accosts *an adulterer* (**Jâram**) with another man's wife, charges him as a thief (**chaura**) and says 'Get thee gone', *shall be made to pay a fine of five hundred* (**Dâpyaḥ pancha s'atam damam**) *i. e.* that kind of fine in which are five hundred *paṇas*. He, moreover, who accepts money from the adulterer, as a bribe, and releases the adulterer, such a one shall be made to pay eight times the amount of the sum so received.

Yâjñavalkya Verse 302.

The king should banish, after cutting off his tongue, him who always imprecates evil upon the king; who calumniates him, as also he who divulges his secret counsels.

Mitâksharâ: Again, one imprecating evil upon the king *e. g.* inimical sentiments towards the king, always *i. e.* who speaks often and often; as also one, who *calumniates him* (**Tasyaivâkros'akâriṇam**) *i. e.* the king *i. e.* who has a habit of defaming him; as also one who divulges *i. e.* reveals to unfriendly persons, *his secret counsels* (**tanmantra**) calculated to increase the prosperity of his own kingdom, or to bring about the fall of anothor kingdom, the king should cut off the tongue of such a one, and banish him from his own kingdom.

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[1] Ch. VIII. 294.

[2] Ch. VIII. 296-298.

For stealing the treasury, or for a like offence, moreover, death alone (is the punishment) *vide* the text of **Manu**[1]: "On those who rob the "King's treasury, and those who persevere in opposing (his commands), "he shall inflict various kinds of coporal punishments, likewise who "conspire with the enemies." Varions (kinds of) 'punishments' *e. g.* confiscation of the entire property, cutting off of a limb, death &c.

Even where there is a confiscations of his entire property, that which is the means of his livelihood, should not be attached, excepting the implements of theft as says **Nârada**:[2] "The weapons of soldiers, the[3] beasts "of burden and the like, of those who maintain themselves by conveying "the goods (of others), the ornaments of public women, the various musical "or other instruments of those who are proficient in these (10); And any "implement by which artificers gain their substance, must not be laid hold "on by the king, even when he confiscates their entire property (11)."

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On account of the prohibitive text, viz "for a Brâhmaṇa, however, there "shall be no corporal punishment," the shaving of his head, and the like should be made at the place of execution, *vide* the text of **Manu**:[4] "For "a Brâhmaṇa however, (the punishments are), the shaving of the head, "the branding and banishing from the town *viz.*, by branding his forehead "with the mark of the crime with which he is charged, and by making "him ride out on a donkey."

Yâjñavalya Verse 303.

For one who sells what was found on a dead body, and likewise for him who strikes his *Guru* (seniors), and (also) for him who mounts the king's conveyance or throne, the punishment is the highest amercement.

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[1] Ch. IX. 275.

[2] Ch. XVII. 10-11.

[3] Dr. Jolly, edition reads शिल्पद्रव्याणि शिल्पनाम् Fr: 'The tools of artizans.'

[4] Not found in the published editions of Manu.

Mitâksharâ: Moreover, for a vendor of what is found on the body of a dead person *e. g.* clothes, flowers, and the like; for one who strikes his *Guru i. e.* the father, the preceptor and the like; and likewise for one who, without the permission of the king, mounts on his conveyance *e. g.* the horse, the elephant and the like; as also his seat, such as the royal throne or the like, the punishment is the highest amercement.

Yâjñavalkya Verse 304.

For him who puts out both eyes, likewise, him who predicts[1] evil of the king, and for a *S'ûdra* living as a Brâhmaṇa, the punishment is eight hundred (*paṇas*).

Mitâksharâ: Again, he, moreover, who through anger puts out the eyes of another; he also, who being a scholar in the science of astrology, but who, not being the preceptor or a like other well-wisher (of the king,) predicts an evil *i. e.* an inauspicious event about the king *e. g.* "By the end of the year you will be deposed from your throne" or the like, and likewise one who being a *S'udra* with the object of getting a meal, exhibits the sacred thread and other marks of a Brâhmaṇa (on his body); for (all) these the punishment is eight hundred (*paṇas*) *i. e.* that kind of punishment in which there are eight of a hundred *paṇas*. For a S'udra putting on the disguise of a Brâhmaṇa with the object of getting an anniversary meal, the punishment prescribed in another Smṛti should be observed *viz*; "A "mark resembling the sacred thread should be carved (on his body) by "means of a heated pin." For one wearing the sacred thread or other sign of a Bráhmaṇa for obtaining maintenance, death alone (is the punishment). *Vide* the text. "He should corporally punish those S'udras who wear the "marks *of the twice-born.*"

The Author mentions a penalty for wrongly deciding a suit through anger, avarice or like other cause

Yâjñavalkya Verse 305.

After, however, reviewing judicial proceedings which have been wrongly decided, the assessors, together with the victorious party, should be fined in twice the amount in dispute.

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[1] It may also mean "who imprecates evil" or "spreads evil report" about the king; or also, who "obeys the commands of the king's enemies."

Mitâksharâ: *Judicial proceedings* (**vyawahârân**), which *are wrongly decided* (**durdrishtân**) in contravention of the rules of the Smṛti and Usage, and which on account of passion, avarice or like other cause, are suspected as being improperly conceived, the king should himself decide properly again; and the assessors, together with the victorious party in the former trial, whose guilt has been established, should each be compelled to pay twice the amount of the fine which is prescribed for a defeated party in a litigation. In the text[1]: "out of passion, avarice," there is no rule of punishment for the (wrongful) winner; and thus there is no repetition in this verse of the former text[1].

When however, a wrong decision is given in a suit on account of the fault of the witnesses, then the witnesses alone should be punished, and neither the winning party, nor even the assessors. When, however, a wrong decision is given in consultation with the king, the assessors and others shall be punished, vide the text[2]: "One quarter (of the iniquity) "goes to the offender; one quarter goes to the witness; one quarter goes to "all the members of the court; (and) one quarter goes to the king." This text, moreover, is intended to demonstrate the guilt of the king and others (to) each severally. However, this[3] text has the effect of establishing the guilt of the king and the others, and not of distributing the share of the (*Apûrva*) unseen results (to be known hereafter) to each severally, as it has been said[4]: "An *apûrva* generates a result which (individually) accrues "to the actor (alone)."

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[1] Yâjñ. II. 4. see p. 5 ll: 12–15 above. The fine for the wrongful winner is not mentioned in II. 4 and so this text is not open to the objection of the fault of repetition.

[2] Ch. III. 12 see also III. 11. Cp. with this Manu Ch. VIII. 18, 19 &c.

By these texts, even those judges who do not deliberately give a false decision, but whose decision comes to be wrong, on account of their inattentiveness at the trial, are equally guilty.

Medhâtithi is of opinion that the guilt goes to the king if the sentence were passed by him, otherwise not.

[3] *i. e.* the text of Nârada quoted above.

According to the Arya rules about the accrual of responsibility, in addition to the results of one's acts which the actor has to suffer in this world, he also prepares for himself by his thoughts and actions, something which always stick to him even after he leaves the human body. That is known as अपूर्व *Apûrva viz*: It is "that unseen result of virtue and vice, which is a relation superinduced, not before possessed, unseen, but efficacions to connect the consequence with the past and remote cause, and to bring about at a distant period, or in another world or birth, the effect."

[4] See Jaimini III. 7–8.(18–20).

The meaning is that in the case of *Apûrva* there is no division or distribution of the guilt or its consequences, but that each one is jointly and severally amenable to the entire result.

समवाय *i. e.* सम्बन्ध Relating to; कर्तृसमवायि *i. e.* relating to the actor.

The Author mentions a penalty for one who tries to upset a proceeding decided according to law and justice

Yâjñavalkya Verse 306.

One who, although defeated according to law and justice, still thinks 'I am not conquered' such a one coming again (into Court) shall be made to pay double (the amount as) fine, when he is defeated.

Mitâksharâ: He, moreover, who although defeated after a legal procedure, (still) impudently thinks 'I am not defeated,' such a one coming again into the court of law by adducing evidence of false documents *and the like, after he is again defeated at a legal trial, should be made to pay double the amount of fine.

APGE 160*.

It has also been said by **Nârada:**[1] "If a man is of opnion that the "suit has been decided and punishment declared in a way contrary to justice, "he may have the cause tried once more, provided he should pay twice the "amount of the fine inflictd." *Tiritam* decided *i. e.* by means of the documentary evidence, witnesses, &c. but where the fine was not pronounced. *Udhṛita-daṇḍam,* where the punishment is declared *i. e.* which has been carried to the stage of the declaration of the fine.

Again, as for the text of Manu[2]: "Whenever a suit has been decid- "ed, or a fine declared, a wise man should consider it as (finally) decided, "and must not annul it." It means that, in cases where a doubt arises as to the legality of a decision on account of the complaint either of the plaintiff or of the defendant, the same may again be judicially tried after having first affirmed him to (pay) a double fine, and not that even when cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c.

Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation. *vide* the text[3]: "What has

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[1] Ch. VI. 65.

[2] Ch. VIII. 233.

[3] The Author of this text is not known. Neither Bâlambhaṭṭa nor Vis'ves'wara mention the name,

"been decided through ignorance[1] by another king, and in departure from "the principles of justice, even that should be made good according to law, "after weeding out the injustice."

The Author indicates the devolution of wealth unjustly recovered as a fine

Yâjñavalkya Verse 307.

What has been obtained, through injustice by the king as fine, having dedicated it to Varuṇa, he should give it himself to the Vipras (after) increasing it thirty-fold.

Mitâksharâ : That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brâhmaṇas after mentally dedicating thus, "This to Varuna". And as much was taken unjustly in the form of a fine from a party so much should be repaid to him ; otherwise, there would be the offence of theft ; and also as the fine was recovered unjustly, the right of ownerhip of the first owner remained unaffected.

"This interpretation of the Dharama-S'âstra is the comopsition of "Vijṇâneśwara himself, a Yogin and a disciple of the sage bearing the title "of Uttama(1).

"Thus has been set out the commentary on the Vyawahâra Káṇda of the "Sage Yájñavalkya, saturated with the sweet language, terse, but, direct, "and (at the same time) expounding the deep meanining (in it) (2).

"The composition called Mitâksharâ has been set out by me in language "deep (in meanig) and clear (in expression), wide in import (although) terse "in form (3).

"The Interpretation of the work of the Sage Yájñavalkya, thus concluded, "to what learned man will it not be acceptable? Though extremely "concise in words, it is as extensive in import, and sprinkles the immortal "nector (of learning) on the ears (4).

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[1] There is an error in the print of the text at p. 160 l. 8.

For राजा ज्ञानकृतं read राजाऽज्ञानकृतं.

"Thus ends the Second Chapter called the Vyawahára of the com-
"mentary called the **Riju-Mitâksharâ** on the Treatise on Dharma-
"śástra by **Yâjñavalkya,** being a work of **Vijñânes'vara Bhattâraka,** the
"leader of the Ascetics of the blessed Paramahansa Order, and the son
"of the worthy **Padmanâbha Bhaṭṭa Upâdhyâya.**" 5

A List of Contents of the Chapters in this Book is being stated.

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,,	II.	,, Special Rules of Procedure.
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,,	IV	,, The Law of Deposits.
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Thus in all there are twenty-five Chapters.

FINIS.

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